

2013 IL App (1st) 121504-U

SIXTH DIVISION  
JUNE 21, 2013

No. 1-12-1504

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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SQUIRE VILLAGE APARTMENT HOMES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 M3 3083
	)	
EUGENE JOSEPH and CELESTE M. COLE-JOSEPH,	)	Honorable
	)	Sandra Tristano,
Defendants-Appellants.	)	Judge Presiding.

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JUSTICE GORDON delivered the judgment of the court.  
Justices Hall and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* Judgment was properly entered for plaintiff in this forcible entry and detainer action where defendants-appellants failed to file transcripts or bystander's reports of hearings and the trial which would have permitted substantive review of their claims.

¶ 2 Defendants Eugene Joseph and Celeste M. Cole-Joseph (the Josephs) appeal *pro se* from an order of the circuit court of Cook County granting judgment for plaintiff, Squire Village Apartment Homes (Squire Village), in the amount of \$7,950 in this forcible entry and detainer action. The Josephs contend that Squire Village breached the implied warranty of habitability by

renting them their Elgin apartment in a defective condition; that the circuit court should have offset the damages awarded Squire Village by the amount of damages incurred by the Josephs as a result of the apartment's defective condition; that the circuit court erred in denying the Josephs' oral motion to file a counterclaim; and that the circuit court should have granted the Josephs' motion to reconsider.

¶ 3 In an amended complaint filed against the Josephs on August 18, 2011, Squire Village sought possession of the premises at 1146 Yew Court, #G, in Elgin, Illinois (the apartment), and rent or damages of \$6090.41. A bench trial was set for September 15, 2011. On that date an order for possession was entered in favor of Squire Village, but the trial on damages was postponed until October 6, 2011. On October 6, the court entered an agreed order of possession, supplanting the prior order, but reserved the issue of damages for determination at a bench trial on November 3, 2011. That trial date was apparently continued, because on December 8, 2011, the Josephs filed an oral motion to file a "countersuit for personal property and injury" and requested a jury trial. Following a hearing, the trial court denied both motions. The record contains no transcript or bystander's report of the hearing on these motions.<sup>1</sup> The trial was set for February 6, 2012, and following a bench trial on that date, judgment was entered for Squire Village and against the Josephs in the amount of \$7,950. No transcript or bystander's report of the trial is contained in the record on appeal.

¶ 4 On March 2, 2012, the Josephs filed a motion to reconsider. They made a number of contentions, including that Squire Village had breached the implied warranty of habitability by renting an apartment that was in defective condition, and that Squire Village actually owed them

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<sup>1</sup>During the pendency of this appeal, we ordered the Josephs to file with this court either a complete transcript or a bystander's report, certified by the trial court, of the proceedings of the hearing of December 8, 2011. This order was entered pursuant to Supreme Court Rule 329 (eff. January 1, 2006). The Josephs have not complied with this order.

damages of \$14,720. In an order dated April 26, 2012, the trial court denied the motion for reconsideration. The order recited that Squire Village's counsel and the Josephs were present and that the court was "fully advised." The record contains no transcript or bystander's report of this hearing.

¶ 5 A bench trial was held in this cause, but the Josephs have failed to file a transcript of that trial, a bystander's report, or an agreed statement of facts as provided by paragraphs (a), (c), and (d) of Supreme Court Rule 323 (eff. December 13, 2005). Without any knowledge of what occurred at trial, we are unable to evaluate the Josephs' claims of error based upon evidence they assert was presented at that trial. Appellants are required to provide the reviewing court with a record which is sufficient to support their claims of error, and doubts and deficiencies arising from an insufficient record will be construed against them. *People v. Hunt*, 234 Ill. 2d 49, 58 (2009). Accordingly, when no transcript or appropriate substitute has been filed, we will presume that the trial court's orders conformed to the law and had a sufficient factual basis. *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009).

¶ 6 The Josephs first contend that, based upon the evidence presented at trial, they established that Squire Village breached the implied warranty of habitability by renting to them a defective apartment. They also contend that they proved that they were entitled to an offset for expenses they incurred because of defects in the apartment, which was allegedly "not fit for its intended use" because of "latent defects." Without any record of the trial testimony, or what exhibits were allowed into evidence at that trial, we cannot evaluate these claims, and we must presume that the judgment of the trial court conformed to the law and the facts. *Id.*, at 422.

¶ 7 The Josephs also contend that the trial court erroneously denied their motion to file a counterclaim. But again, the Josephs have not included in the record on appeal a transcript or bystander's report of the hearing at which the trial court denied their motion. When a trial court

denies a motion to file a counterclaim, we review for an abuse of discretion. *National Educational Music Co., Ltd. v. Rieckhoff*, 292 Ill. App. 3d 260, 263-64 (1977). Factors to be considered include the timeliness of the motion and whether the other parties are prejudiced or surprised by the motion to amend. *Id.*, at 264. Without a transcript or other record of the hearing at which the trial court decided this motion, we can only speculate about the reasons for the denial. We will presume that the trial court's orders conformed to the law and had a sufficient factual basis. *In re Marriage of Gulla*, 234 Ill. 2d at 422.

¶ 8 Finally, the Josephs contend that the circuit court should have granted their motion to reconsider. Again, this motion was denied following a trial and a hearing for which we have no transcript or other record. Any deficiencies or doubts originating from an incomplete record will be construed against the appellant. *Hunt*, 234 Ill. 2d at 58. In the absence of any record support for the Josephs' contentions on appeal, we will presume that the circuit court's orders conformed to the law and the facts. *In re Marriage of Gulla*, 234 Ill. 2d at 422. For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 9 Affirmed.