2013 IL App (1st) 123224-U

FIFTH DIVISION
MODIFIED OCTOBER 11, 2013

No. 1-12-3224

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RMK MANAGEMENT CORPORATION, as Agent of Michigan Avenue Group, LLC,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 12 M1 702350
TIBERIU KLEIN,	)	Honorable Orville Hambright,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Where an appellant fails to obtain a transcript of the proceedings or a bystander's report in a forcible entry and detainer action, this court does not have the necessary tools with which to review and must affirm.

¶ 2 Plaintiff RMK Management Corporation (RMK) filed a forcible entry and detainer action against defendant Tiberiu Klein (Klein). The trial court entered judgment in favor of plaintiff for possession of the premises and ordered defendant to pay $7,700 for unpaid rent. Defendant

appeals the trial court's ruling, arguing that (1) dismissal of defendant's counterclaim was erroneous and all subsequent orders, including the judgment for unpaid rent, are void; (2) the trial court erroneously struck his jury demand; (3) the trial court abused its discretion in not admitting a letter from plaintiff to defendant into evidence; and (4) the judgment is void because RMK is not a proper party plaintiff. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Plaintiff RMK filed a forcible entry and detainer action against defendant Klein for possession of premises and unpaid rent. Defendant, appearing *pro se*, filed a counterclaim alleging breach of the warranty of habitability, claiming property damage due to flooding, and claiming reimbursement of rent payments made in advance. The trial court granted plaintiff's motion to strike defendant's amended counterclaim and denied defendant's motion to reconsider. Defendant then filed an appeal, no. 1-12-2391, appealing (1) the dismissal of his counterclaim, (2) the denial of his motion to reconsider, (3) the denial of a motion for substitution of judge as a matter of right, and (4) the order of sanctions in setting the matter for trial.

¶ 5 Defendant then failed to appear at a pretrial conference on October 24, 2012, and the trial court struck defendant's jury demand. After a bench trial on October 25, 2012, the trial court entered judgment for plaintiff for possession of the premises and $7,700 for unpaid rent. Defendant then filed a second notice of appeal from: (1) the judgment for possession and the unpaid rent, (2) the order striking defendant's jury demand, (3) an order denying defendant's motion to stay the trial until appeal no. 1-12-2391 is decided, and (4) the trial court's refusal to

admit a letter from plaintiff to defendant into evidence. In the same notice of appeal, defendant also appealed all subsequent orders entered after his previous appeal.

¶ 6 We then dismissed appeal no. 1-12-2391 for want of jurisdiction because the orders were interlocutory and allowed defendant's brief filed in that appeal to serve as defendant's brief in this appeal. We also dismissed defendant's appeal from the judgment for possession, finding that the issue was moot because defendant has been evicted from the premises.

¶ 7 The appellate record does not contain a transcript or bystander's report.

¶ 8 ANALYSIS

¶ 9 On this appeal, defendant argues that (1) dismissal of defendant's counterclaim was erroneous and all subsequent orders, including the judgment for unpaid rent, are void; (2) the trial court erroneously struck his jury demand; (3) the trial court abused its discretion in not admitting a letter from plaintiff to defendant into evidence; and (4) the judgment is void because RMK is not a proper party plaintiff. For the following reasons, we affirm.

¶ 10 I. Standard of Review

¶ 11 Plaintiff's motion to strike defendant's counterclaim was not labeled and is thus a hybrid motion. We do not know whether it was presented under section 2-615 or section 2-619 of the Illinois Code of Civil Procedure. 735 ILCS 5/2–615, 2–619 (West 2010). However the standard of review for dismissal of a counterclaim under either section is *de novo*. *Solaia Technology, LLC v. Specialty Pubishing Co.*, 221 Ill. 2d 558, 578-79 (2006). Under the *de novo* standard, the reviewing court does not need to defer to the trial court's judgment or reasoning and performs the

same analysis that a trial judge would perform. *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 20.

¶ 12 The imposition of sanctions is an exercise of the trial court's inherent authority, and its decision to strike defendant's jury demand is reviewed for an abuse of discretion. *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 66-67 (1995). " 'An abuse of discretion exists where no reasonable person would agree with the position of the trial court.' " *Matthews v. Avalon Petroleum Co.*, 375 Ill. App. 3d 1, 9 (2007) (quoting *Brax v. Kennedy*, 363 Ill. App. 3d 343, 355 (2005)). The admission of evidence is also within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *People v. Becker*, 239 Ill. 2d 215, 234 (2010). As noted, an abuse of discretion exists where " 'no reasonable person would take the view adopted by the trial court.' " *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 848 (2010) (quoting *Foley v. Fletcher*, 361 Ill. App. 3d 39, 46 (2005)).

¶ 13 Finally, the trial court's finding that RMK is a proper party is a finding of fact and will not be disturbed on review unless it is against the manifest weight of the evidence. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005). " 'A judgment is 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.' " *Goldberg v. Astor Plaza Condominium Ass'n*, 2012 IL App (1st) 110620, ¶ 60 (quoting *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995)).

¶ 14 II. Inadequate Record on Appeal

¶ 15 While "*pro se* litigants are held to a lesser standard in complying with the rules for appealing to the appellate court," all appellants are required to meet a necessary threshold in

providing the court an adequate record to review the issues raised on appeal. *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993). Even if we were to consider defendant's arguments, there is no record of the proceedings for us to review. In the absence of an adequate record on appeal, it is presumed that the order entered by the trial court conforms to the law and has a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In this case, defendant failed to provide the appellate court with a transcript or bystander's report for either the pretrial conference or the subsequent bench trial. We do not have sufficient information, in the absence of a transcript or bystander's report, to review and determine the issues presented. *Cf. Detrana v. Such*, 368 Ill. App. 3d 861, 863 (2006).

¶ 16 Defendant first contends that the trial court erroneously dismissed his counterclaim and that all subsequent orders are void. Without a record of the trial testimony or what evidence was admitted at trial, we cannot review this claim and must presume that the trial court's order conformed to the law. *Foutch*, 99 Ill. 2d at 392. Second, defendant asserts that the trial court erred in striking his jury demand as a sanction for his failure to appear at a pretrial conference. The imposition of sanctions for failure to comply with pretrial procedure is within the discretion of the trial court. *Sander*, 166 Ill. 2d at 67. Further, failure to appear for a bench trial docket call may act as a waiver of a previously asserted jury demand. *Puglisi v. Hansford*, 193 Ill. App. 3d 803, 807 (1990). *Cf. Reuben H. Donnelley Corp. v. Earles*, 268 Ill. App. 3d 263, 264 (1994) (requiring written notice that a default judgment may be entered in the case of nonappearance to find that a defendant has waived a jury demand by failing to appear). Without a transcript or a bystander's report for the hearing in which defendant's jury demand was stricken, we cannot

evaluate this claim and must presume that the trial court's order conformed to the law. *Foutch*, 99 Ill. 2d at 392.

¶ 17 Third, defendant contends that the trial court erred in not admitting into evidence a letter containing details of a rental payment agreement between plaintiff and defendant. However, in its order of October 25, the trial court noted that the document was not admitted into evidence because defendant offered it after resting his case. Further, the trial court found that, even if the letter had been admitted into evidence, it would have "confirmed the amount due plaintiff from defendant as stated in plaintiff's ledger." A trial court has discretion in ruling on the admission of evidence before it. *Becker,* 239 Ill. 2d at 234. Without a transcript or bystander's report of the trial, we must presume that the court acted in conformity with the law. *Foutch*, 99 Ill. 2d at 392. Finally, defendant's argument that RMK is not a proper party was not raised in the notice of appeal, and we do not know whether this argument was presented to the trial court as the appellate record is silent on this issue also. *People v. Smith*, 228 Ill. 2d 95, 104 (2008); *Foutch*, 99 Ill. 2d at 392. Therefore, for reasons already stated, we presume as correct the trial court's finding that RMK was the proper party plaintiff.

¶ 18 In defendant's *pro se* motion for reconsideration, defendant argues that the trial judge died a short time before the filing of a notice of appeal and that it was impossible to obtain a report of proceedings. In addition, defendant could have prepared a report of proceedings and either obtained the agreement of plaintiff or argued for its certification before another judge. Without some record on appeal, we are not in a position to grant defendant the relief requested.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, we find that the record offered on appeal is insufficient to support defendant's claims.

¶ 21 Affirmed.