

THIRD DIVISION
November 19, 2014

No. 1-12-3710

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

BOARD OF DIRECTORS, DEARBORN VILLAGE I)	Appeal from the
CONDOMINIUM ASSOCIATION, an ILLINOIS)	Circuit Court of
NOT-FOR-PROFIT CORPORATION)	Cook County.
)	
Plaintiff-Appellee,)	No. 07 M1 720502
)	
v.)	
)	
MYRON ADAMS,)	Honorable
)	James L. Kaplan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Pucinski and Justice Hyman concurred in the judgment.

O R D E R

¶ 1 **Held:** Denial of defendant's section 2-1401 motion to vacate order for possession affirmed where defendant was properly notified of forcible entry and detainer action and laches did not bar enforcement of the order.

¶ 2 Defendant, Myron Adams, *pro se*, appeals from an order of the circuit court of Cook County denying his emergency motion to quash service and set aside an order for possession in favor of plaintiff, Board of Directors, Dearborn Village I Condominium Association

(Association). Adams challenges the trial court's personal jurisdiction over him, and contends that the court erred by (1) denying his petition based on lack of due diligence and a meritorious defense and (2) allowing the Association to enforce an order for possession more than four years after it was issued. He thus requests that the execution of the forcible eviction "be declared void," and that he be given possession of the property at issue. We affirm.

¶ 3 The common law record filed in this case shows that Adams was an occupant of unit 18 in the condominium building located at 1812 South Dearborn Court in Chicago. On February 3, 2005, Adams transferred the property title to Edward Watkins, but continued to occupy the unit with his family. The Association later sued Watkins and "Unknown Occupants" of the unit in a forcible entry and detainer action for failure to pay assessments and fees. On August 21, 2007, Adams was served with summons for the action as an "unknown occupant" of the unit, and Watkins was served on January 9, 2008. Neither Watkins nor Adams responded to the summons, and on February 5, 2008, the circuit court entered an *ex parte* order for possession in favor of the Association, and against Edward Watkins and "All Unknown Occupants." Watkins then filed a series of post-judgment motions, and ultimately, the trial court affirmed the judgment and order for possession in favor of the Association in January 2011. About one year later, in March 2012, the Association filed a motion to extend the period of enforcement on the order for possession. The record does not contain a copy of the court's April 10, 2012, ruling on that motion, but the Association represents in its brief that the trial court struck the motion off call after determining that the Association is exempt from seeking an extension under section 9-117 of the Illinois Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-117 (West 2010)), and no motion or order was necessary.

¶ 4 Adams continued to live in the unit throughout the pendency of this litigation, and was residing there in May 2012, when the Association sought to enforce the order for possession. On May 4, 2012, the sheriff evicted Adams and his family from the property, and three days later, Adams filed an emergency motion to quash service and set aside the order for possession and judgment under sections 2-1301 and 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1301, 735 ILCS 5/2-1401 (West 2010)). Adams claimed that he had not been given proper notice or named on the order for possession and, therefore, it was void. The Association filed a motion to dismiss, arguing, *inter alia*, that it was not obligated to name Adams, and that Adams was served in August 2007. On June 6, 2012, following a hearing where both parties were represented by counsel, the trial court denied the motion and ordered that Adams be allowed limited access to the property to remove his belongings.

¶ 5 On August 24, 2012, Adams filed a section 2-1401 petition to vacate the order for possession, arguing, again, that the motion to quash service and set aside the order for possession should have been granted for lack of jurisdiction, and that the 120-day-old order for possession had expired and could not be enforced because it was void. The trial court denied the petition to vacate due to "lack of due diligence and lack of meritorious defense," adding that the order of June 6, 2012, denying Adams's motion to quash service stands. On October 26, 2012, the court denied Adams's motion to reconsider, and this court later granted Adams leave to file a late notice of appeal.

¶ 6 In his challenge to the trial court's ruling, Adams contends that the trial court lacked jurisdiction to enter judgment against him and that the order for possession was void and barred by the doctrine of laches. Proper service is a prerequisite for a court to obtain personal

jurisdiction over a party, and a dispute over personal jurisdiction, as presented here, is a question of law, which we review *de novo*. *Jayko v. Fraczek*, 2012 IL App (1st) 103665, ¶3 (2012).

¶ 7 Adams asserts that he was the owner and "a known occupant" of the property, and that the Association was therefore required to provide him notice of the action by individually naming him in the lawsuit and order for possession. But Adams's claim of ownership is not supported by the record, which contains a copy of a warranty deed showing that Adams conveyed the property to Watson on February 3, 2005. Although Adams alleges that Watson fraudulently and secretly transferred the property title to himself, there is no evidence in the record to support that contention. Accordingly, we find that Adams was not an owner, but merely an occupant of the property at the time in question.

¶ 8 In that capacity, we observe that section 9-104.2 of the Act (735 ILCS 5/9-104.2 (a-5) (West 2010)), provides in relevant part:

"[I]f the complaint alleges that the unit is occupied or may be occupied by persons other than or in addition to the unit owner of record, that the identities of the persons are concealed and unknown, they *may* be named and joined as defendant "Unknown Occupants". * * * If prior to execution of judgment for possession the identity of a defendant or defendants served in this manner is discovered, his or her name or names and the record *may* be corrected upon hearing pursuant to notice of motion served upon the identified defendant or defendants at the unit in the manner provided by court rule for service of notice of motion." 735 ILCS 5/9-104.2 (a-5) (West 2010) (Emphasis added.).

The Association contends, and we agree, that under the clear and unambiguous language of the statute (*Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990)), the Association could personally name a non-owner occupant in the complaint and order for possession, but it was not required to do so.

¶ 9 In its complaint, the Association specified Watkins as the owner of record and party in default, and "Unknown Occupants," which included Adams and his family. Under the discretionary language of the statute, the Association had no obligation to personally name Adams in the complaint or in the final order for possession prior to execution. 735 ILCS 5/9-104.2 (a-5) (West 2010). Accordingly, we find no jurisdictional issue or error by the trial court in entering judgment against Adams as an "unknown occupant" in the forcible entry and detainer proceeding.

¶ 10 Adams further contends that the Association failed to effectuate proper service upon him regarding the initial order for possession. We disagree.

¶ 11 Summons may be served on defendant "Unknown Occupants" by the sheriff or court appointed process server by leaving a copy at the unit with any person residing at the unit of the age of 13 years or greater. 735 ILCS 5/9-104.2 (a-5) (West 2010). Here, the record shows that the sheriff's deputy served Adams personally on August 21, 2007, and the return of service describes the individual served as a 46-year-old black male named "Myron Adams," leaving no doubt as to proper service on Adams. Thus, we find that the trial court obtained jurisdiction over Adams as an "unknown occupant" of the unit.

¶ 12 Adams also contends that the trial court erred in denying his motion for a lack of due diligence and meritorious defense, where he "did all a reasonable person could do" when he found out about the order for possession on the day of eviction. As set forth above, the record shows that Adams was personally served with summons in the forcible entry action in August

2007, and the trial court denied his emergency motion after a hearing where both parties were represented by counsel. Adams has provided no transcripts from that hearing, and we thus presume that the trial court was fully advised in the matter and heard adequate evidence to support its decision to deny Adams's motion, and that its judgment conformed to the law. *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009) ("Without an adequate record preserving the claimed error, the court of review must presume the circuit court's order had a sufficient factual basis and that it conforms with the law.").

¶ 13 Adams finally contends that the doctrine of laches bars the Association from enforcing the order for possession from February 2008. Plaintiff responds that its motion to extend the period of enforcement for the order for possession and the trial court's subsequent ruling on that motion are not properly before this court on appeal because Adams filed a notice of appeal solely from the order of October 26, 2012, and his arguments regarding a purported delay in filing the order for possession with the Sheriff are moot, as they have no relevancy. We note, however, that an appeal from an unspecified judgment is reviewable if it is a step in the procedural progression leading to the judgment specified in the notice of appeal. *LaSalle National Bank v. City Suites, Inc.*, 325 Ill. App. 3d 780, 785 (2001). Here, the court's ruling in April 2012 on plaintiff's motion to extend the period of enforcement for the order for possession was a step in the procedural progression leading to the October 2012 judgment because it allowed the Sheriff to enforce the order for possession and led Adams to file the emergency motion at issue here.

¶ 14 In any event, we find Adams's claim to be without merit. Section 9-117 of the Act, which governs the expiration of orders of possession, provides in relevant part that "[This section shall not] affect the rights of Boards of Managers under Section 9-104.2" 735 ILCS 5/9-117 (West 2010). In this case, the Board of Managers of the Association filed the forcible entry and detainer

action at bar pursuant to section 9-104.2 (735 ILCS 5/9-104.2 (West 2010)). Since section 9-117 of the Act does not affect the rights of the Association (735 ILCS 5/9-117 (West 2010)), plaintiff was not bound by the 120-day requirement of that section, and could enforce the order for possession at any time.

¶ 15 Moreover, the defense of laches requires a showing that (1) a party has exhibited an unreasonable delay in asserting a claim; and (2) the opposing party has suffered prejudice as a result of the delay. *Tully v. State*, 143 Ill. 2d 425, 432 (1991). Here, Adams fails to show what, if any, prejudice he experienced as a result of the Association's decision to evict him from the property about 1½ years after a final judgment was entered on the order for possession in January 2011. Adams knew that the Association was seeking possession of the property when it timely filed the forcible entry and detainer action. In fact, the Association's delay has inured to Adams' benefit in that he and his family have continued to reside in the unit during the period the Association has refrained from enforcing the order of possession. Accordingly, Adams cannot show that he was prejudiced by the 1½ year delay in enforcing the order. *In re Estate of Beckhart*, 371 Ill. App. 3d 1165, 1170-71 (2007).

¶ 16 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 17 Affirmed.