2014 IL App (1st) 133226-U

SIXTH DIVISION
August 15, 2014

No. 1-13-3226

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from the
CAMBRIDGE APARTMENTS CONDOMINIUM ASSOCIATION,	)	Circuit Court of Cook County
	)	
Plaintiff-Appellee,	)	
	)	No. 12 M1 725220
v.	)	
	)	
ZOJACQUELINE E. WILLIAMS,	)	Honorable Aicha MacCarthy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: The plaintiff condominium association was entitled to judgment against the defendant former unit owner for unpaid assessments. The deed to the subsequent owner was not recorded until shortly before trial and the trial court could reasonably conclude the plaintiff was not otherwise notified of the sale. The defendant failed to include ledgers, checks and money orders in the record on appeal necessary to review the amount of the judgment. The defendant also failed to establish the invalidity of the association's assessment imposed after the untimely adoption of the association's annual budget.

¶ 2 Following a bench trial in the circuit court of Cook County, defendant Zojacqueline Williams (Williams) appeals from an order granting judgment in favor of plaintiff Cambridge Apartments Condominium Association (Cambridge) in the amount of $2,086.24 in an action Cambridge brought pursuant to the Illinois Forcible Entry and Detainer Act (Act) (735 ILCS 5/ 9-101 *et seq*. (West 2012)). On appeal, Williams argues: (1) Cambridge was not entitled to judgment against her because she sold the property prior to the assessments Cambridge sought to recover; (2) if Cambridge was entitled to judgment, Williams was entitled to credit for assessments paid by the subsequent owner of the property; and (3) Cambridge was not entitled to recover for a retroactive special assessment. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the following facts. On October 9, 2012, Cambridge filed a complaint against Williams in the circuit court of Cook County. Cambridge asserted it was entitled to possession of 2222 East 70th Place, Unit 110, in Chicago, Illinois (Unit 110). Cambridge also sought assessments and other common charges of Unit 110 through July 20, 2012, in the amount of $2,494.30, plus interest, costs, attorney fees and additional sums as they become due. The complaint does not allege which assessments and charges were already due.

¶ 5 Prior to trial, on August 20, 2013, Williams filed a motion to dismiss Cambridge's complaint pursuant to section 2-619(a)(9) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2012)). In the motion, Williams asserted that on January 18, 2012, she sold Unit 110 to Patricia Bennett (Bennett). According to the motion, Bennett informed Cambridge of the sale and paid assessments on the unit thereafter. Williams also asserted the deed for the sale of Unit 110 was not recorded because Cambridge had a delinquent water bill,

which precluded obtaining a water certificate necessary to record a deed in Cook County. Williams supported her motion with a purchase and sales agreement for Unit 110 signed by Williams and Bennett, as well as an unrecorded deed for the unit. The unrecorded deed was witnessed, subscribed and sworn to on June 25, 2012, by notary public Lavondria Cobb (Cobb).

¶ 6 On August 27, 2013, the circuit court entered an order striking the motion to dismiss.

¶ 7 On August 29, 2013, the circuit court held a trial in the matter. Alma Jordan (Jordan) testified she was president of Cambridge's board of managers and had been a board member since 1997. According to Jordan, on May 24, 2012, Cambridge sent a notice to Williams in Santa Monica, California, indicating a debt of $6,671.35 for Unit 110 and the accompanying garage space. Referring to Cambridge's account ledger, Jordan further testified that as of August 29, 2013, Williams had unpaid assessments in the amount of $2,086.24.

¶ 8 Bennett testified she owned Units 104 and 110 within the Cambridge building. According to Bennett, she purchased Unit 110 from Williams in January 2012. Over objection, Bennett testified she received a deed for the unit at the closing of the transaction. Bennett understood at the time of closing that the deed would be recorded, but later learned the deed had not been recorded because Cambridge had not paid the water bill. To Bennett's knowledge, the deed was recorded at the time of her testimony.

¶ 9 Bennett also testified she had paid the assessments on Unit 110 since January 2012. Bennett further testified she obtained documentation from her bank reflecting that the checks for the assessments had been cashed. In addition, Bennett testified she had three "communications" with Jordan regarding her ownership of Unit 110. According to Bennett, she also provided Cambridge with written notice of her ownership of Unit 110, but did not have a copy of that letter with her at the time of trial.

¶ 10 Moreover, Bennett further testified there was an outstanding balance on Unit 110 when she purchased the unit. Bennett tendered a check to Cambridge in the amount of $3,957.05, the amount the Cambridge board represented as the sum of the unpaid assessments for Unit 110 through October 2011. Bennett testified she subsequently learned there were also unpaid assessments for the months of November and December in 2011. Bennett testified she paid the November and December 2011 assessments with a check in the amount of $806.12.

¶ 11 On cross-examination, Bennett testified Article VIII of Cambridge's condominium declaration required the seller of any unit to give 30 days' prior notice to the board of managers.

¶ 12 Cobb, a paralegal, testified she was familiar with the transaction between Williams and Bennett. Cobb also testified that after the January 2012 closing on Unit 110, she attempted to record the deed, but was unable to do so because the recorder of deeds office requires a water certificate, which she could not obtain because Cambridge had a past due water bill.[1] Cobb further testified she was unable to record the deed in June 2012, for the same reasons. Cobb testified she was able to record the deed on August 27, 2013, because Cambridge had made arrangements to pay the water bill prior to that date.

¶ 13 Jordan, recalled as a witness during the trial, testified based on the association's account ledgers that Cambridge credited checks received for Unit 110 to the account for Williams because, as far as they knew, Williams remained the owner of the premises. Jordan also testified the Board had no knowledge that title had been transferred from Williams. Jordan further testified that not every monthly assessment was paid from January 2012 through August 2013.

[1] The record does not indicate whether the unpaid water bill applied to Unit 110 or the entire building, but the record establishes the amount of the unpaid bill was approximately $4,000.

¶ 14 On cross-examination, Jordan testified a Cambridge ledger also included a retroactive increase in the monthly assessments for January 2009 through July 2009.[2] Jordan explained Cambridge prepares a budget for each calendar year, but the budget for 2009 was not timely adopted by the board of managers, resulting in increases in the assessments not being posted until July 2009. Jordan acknowledged section 8Q of Cambridge's declaration provided that in the absence of a budget, the owner shall pay the monthly assessment at an amount established by the board or the preexisting amount. Jordan testified the retroactive assessment was authorized by law which superseded the declaration, but she did not have a copy of the law to which she was referring at trial. Jordan also testified there was a separate special assessment Williams paid in October 2011, which was reflected in a separate ledger. Jordan was then cross-examined about payments reflected in Cambridge's original ledger as opposed to the subsequent revised ledger. On redirect examination, Jordan testified that according to Cambridge's records after accounting for all checks received for Unit 110, the current amount due for the unit was $2086.24.

¶ 15 Bennett, recalled as a witness, testified she made a payment of $5,172.84 for back assessments in March 2012, as well as a separate $408.06 payment for the March 2012 assessment.[3] Bennett testified she wrote a check in the amount of $408.06 for the April 2012 assessment, which Bennett testified was not in the Cambridge ledger. Bennett also testified she

[2] Jordan was not specifically asked whether the retroactive assessments applied solely to Unit 110 or to all Cambridge units.

[3] The payment amounts mentioned in this portion of Bennett's testimony differ from those mentioned in her initial testimony. Bennett's testimony variously refers to checks, money orders, and a Cambridge ledger, none of which are included in the record on appeal.

was notified about the retroactive assessment and disputed it on the ground that the amount of the increase was not permitted by law.

¶ 16 On September 10, 2013, the trial court entered judgment in favor of Cambridge and against Williams in the amount of $2,086.24, but continued the matter on the issue of attorney fees. On October 4, 2013, the trial court awarded Cambridge $5,529 in attorney fees and $573 in court costs in addition to the underlying judgment. On October 8, 2013, Williams filed a timely notice of appeal to this court.

¶ 17 ANALYSIS

¶ 18 Prior to addressing the merits of this appeal, we observe the brief filed by Williams fails to comply with the requirements of Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2008), which requires the appellant's brief "shall contain [a statement of] the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Supreme court rules " ' "are not aspirational. They are not suggestions. They have the force of law, and the presumption must be that they will be obeyed and enforced as written." ' " *Rodriguez v. Sheriff's Merit Commission of Kane County*, 218 Ill. 2d 342, 353 (2006) (quoting *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494 (2002) (quoting *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995))). Where an appellant's brief violates the requirements of our supreme court rules, this court has the discretion to strike the brief and dismiss the appeal or disregard appellant's arguments. *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001). We recognize, however, " '[w]here violations of supreme court rules are not so flagrant as to hinder or preclude review, the striking of a brief in whole or in part may be unwarranted.' " *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096, 1101 (2008) (quoting *Merrifield v. Illinois State Police Merit Board*, 294 Ill. App. 3d 520, 527 (1997)).

¶ 19 In this case, the brief submitted by Williams contains no citations to the record on appeal in the statement of facts. Rather, the brief refers to exhibits attached to the brief, only some of which appear in the record on appeal. See *City of Chicago v. Harris Trust & Savings Bank*, 346 Ill. App. 3d 609, 615, n. 2 (2004) (reviewing court cannot consider a document in appendix if it is not made part of record on appeal); accord *Marzouki v. Najar–Marzouki*, 2014 IL App (1st) 132841, ¶ 20 (including documents in an appendix is not proper way to supplement record). The record in this case, however, is sufficiently straightforward that the violations of the supreme court rules do not hinder or preclude review. Similarly, the simplicity of the record also allows us to review the issues on appeal, despite Cambridge's failure to file an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 20 This court, in the exercise of its discretion, will consider this appeal on its merits. The failure by Williams to comply with Rule 341(h)(6), however, is not without consequences. It is generally the appellant's burden to affirmatively demonstrate error from the record. *In re Alexander R.*, 377 Ill. App. 3d 553, 557 (2007). The First District's docket is full and noncompliance with the supreme court rules does not help us resolve appeals expeditiously. *In re Estate of Parker*, 2011 IL App (1st) 102871, ¶ 47. "Reviewing courts will not search the record for purposes of finding error *** when an appellant has made no good-faith effort to comply with the supreme court rules governing the contents of briefs." *Id.* "[I]t is neither the function nor the obligation of the Appellate Court to act as an advocate or search the record for error ." *People v. Universal Public Transportation, Inc.*, 2012 IL App (1st) 073303-B, ¶ 50. With these admonitions in mind, we turn to consider the merits of this appeal.

¶ 21 On appeal, Williams argues: (1) Cambridge was not entitled to judgment against Williams because she was not the owner of the property at issue; (2) if Cambridge was entitled to

judgment, Williams was entitled to credit for assessments paid by the new owner of the property; and (3) Cambridge was not entitled to recover for a retroactive special assessment. Generally, the standard of review applied regarding a judgment from a bench trial is whether the order or judgment is against the manifest weight of the evidence. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12. "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). "We will reverse the trial court's decision only where the appealing party presents evidence that is strong and convincing enough to overcome, completely, the evidence and presumptions existing in the opposing party's favor." *Wolinsky v. Kadison*, 2013 IL App (1st) 111186, ¶ 116. "As a reviewing court, we may not overturn a judgment merely because we disagree with it, or as the trier of fact, we might have come to a different conclusion." *Id.* As the trier of fact in a bench trial, the court is in a superior position to observe the demeanor of the witnesses while testifying, to judge their credibility and to determine the weight of their testimony. *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 599 (2000). The reviewing court takes questions of testimonial credibility as resolved in favor of the prevailing party and must draw from the evidence all reasonable inferences in support of the judgment. *Id.* at 599. In reviewing a trial court's conclusions of law, however, we apply a *de novo* standard of review. *Eychaner*, 202 Ill. 2d at 252.

¶ 22 On appeal, Williams first argues Cambridge was not entitled to judgment against Williams because she was not the owner of the property at issue. Section 9-102 of the Act provides in part:

"(a) The person entitled to the possession of lands or tenements may be restored

thereto under any of the following circumstances:

***

(7) When any property is subject to the provisions of the Condominium Property Act, the owner of a unit fails or refuses to pay when due his or her proportionate share of the common expenses of such property, or of any other expenses lawfully agreed upon or any unpaid fine, the Board of Managers or its agents have served the demand set forth in Section 9-104.1 of this Article in the manner provided for in that Section and the unit owner has failed to pay the amount claimed within the time prescribed in the demand; or if the lessor-owner of a unit fails to comply with the leasing requirements prescribed by subsection (n) of Section 18 of the Condominium Property Act or by the declaration, by-laws, and rules and regulations of the condominium, or if a lessee of an owner is in breach of any covenants, rules, regulations, or by-laws of the condominium, and the Board of Managers or its agents have served the demand set forth in Section 9-104.2 of this Article in the manner provided in that Section." 735 ILCS 5/9-102(a)(7) (West 2012).

Williams thus concludes Cambridge cannot proceed against her because she sold and transferred Unit 110 to Bennett.

¶ 23 Williams acknowledges Cambridge contested the validity of the deed to Bennett because the deed was not recorded until August 27, 2013. In response, Williams observes "the failure to record does not affect a deed in its operation as a conveyance." *Lucas v. Westray*, 408 Ill. 243, 248 (1951). The grantee's failure to record the deed, however, may affect the grantee's rights *vis-a-vis* a third party. See *In re Cook County Treasurer*, 185 Ill. 2d 428, 433 (1998) (citing 765

ILCS 5/30 (West 1996)), Indeed, section 30 of the Conveyances Act provides:

> "All deeds, mortgages and other instruments of writing which are authorized to be recorded, shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers, without notice, until the same shall be filed for record." 765 ILCS 5/30 (West 2012).

¶ 24 Thus, the question becomes whether Cambridge was a creditor without notice in this case. Sections 9(g)(1) and 9(h) of the Condominium Property Act provide that if a unit owner fails to make timely payment of common expenses, the amount due shall constitute a lien on the interest of the unit owner in the property, which may be foreclosed upon by the board of managers of the condominium association. 765 ILCS 605/9(g)(1), (h) (West 2012). A lien is a legal right or interest that a creditor has in another's property. Black's Law Dictionary (9th ed. 2009). Accordingly, Cambridge is a creditor with respect to the unpaid assessments in this case.

¶ 25 The issue of whether Cambridge had notice of the unrecorded deed is a question of fact. See *Banco Popular v. Beneficial Systems, Inc*., 335 Ill. App. 3d 196, 205 (2002). In this case, Bennett testified she had informed Jordan by telephone of her ownership of Unit 110 and provided Cambridge with written notice of her ownership. The record does not establish when the purported telephone conversation occurred. Nor did Bennett have a copy of the letter with her at trial. Furthermore, Jordan testified the Board had no knowledge that title had been transferred. Bennett testified Article VIII of Cambridge's condominium declaration required the seller of any unit to give 30 days' prior notice to board of managers. The record contains no evidence that Williams notified Cambridge of the sale herself. Cambridge cashed checks from

Bennett for Unit 110, but absent notice, could have believed Bennett was merely handling payments for Williams. The trial court was in a superior position to judge the credibility of the witnesses. The trial court apparently rejected Bennett's bare assertion of notice, and the evidence in the record on appeal is not strong enough for this court to conclude that determination is against the manifest weight of the evidence. Accordingly, Williams has failed to establish that Cambridge was a creditor without notice in this case. Thus, the unrecorded deed to Bennett did not preclude Cambridge from obtaining a judgment against Williams.

¶ 26 Williams next argues in the alternative that if Cambridge was entitled to judgment, Williams was entitled to credit for assessments paid by Bennett. Jordan, however, testified Cambridge credited checks received for Unit 110 to the account for Williams, although not every monthly assessment was paid from January 2012 through August 2013. Williams also relies upon Bennett's testimony that she tendered a check to Cambridge in the amount of $3,957.05, representing unpaid assessments through October 2011. Williams asserts "the alleged special assessment did not appear on the ledger and the payment was not credited at all." On this point, Jordan testified there was a separate special assessment Williams paid in October 2011, which was reflected in a separate ledger. The record on appeal does not include any ledgers from which this court could make any independent judgment of the issue.[4] Accordingly, Williams has failed to demonstrate the trial court's acceptance of the amount Cambridge claimed was due is against the manifest weight of the evidence.

[4] Williams refers to a ledger as Exhibit G to its brief. As previously noted, exhibits to the brief which are not included in the record on appeal are not to be considered by this court. See *City of Chicago*, 346 Ill. App. 3d at 615, n. 2. Moreover, the page labeled "Exhibit G" in the brief is not a ledger and none of the exhibits attached to the brief appear to be a ledger.

¶ 27 Lastly, Williams contends Cambridge was not entitled to recover for a retroactive special assessment. Williams relies on section 18 of the Condominium Property Act, which provides the bylaws of a condominium association shall provide:

> "that each unit owner shall receive notice, in the same manner as is provided in this Act for membership meetings, of any meeting of the board of managers concerning the adoption of the proposed annual budget and regular assessments pursuant thereto or to adopt a separate (special) assessment ***." 765 ILCS 605/18(a)(8)(i) (West 2012).

Williams contends this statute sets forth a procedure for a special assessment where there is a shortage in the prior budget. Accordingly, Williams concludes Cambridge cannot "back door" the proper adoption of a special assessment by calling it a retroactive general assessment.

¶ 28 Resolving this issue requires this court to interpret the Condominium Property Act. Accordingly, our review proceeds *de novo*. *Spanish Court Two Condominium Association v. Carlson*, 2014 IL 115342, ¶ 13 (citing *Knolls Condominium Association v. Harms*, 202 Ill. 2d 450, 454 (2002) (the question of the proper interpretation to be afforded statutory provisions is a question of law)). In construing a statute, our primary function is to give effect to the legislature's intent. *Gallagher v. Union Square Condominium Homeowner's Association*, 397 Ill. App. 3d 1037, 1041 (2010) (citing *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 332 (2008)). The best indicator of the legislature's intent is the plain and ordinary meaning of the statute's language. *Gallagher*, 397 Ill. App. 3d at 1041 (2010) (citing *Abruzzo*, 231 Ill. 2d at 332). When a statute is clear and unambiguous, a court must give effect to the plain and ordinary meaning of the language without resort to other tools of statutory construction. *Gallagher*, 397 Ill. App. 3d at 1041 (2010) (citing *Abruzzo*, 231 Ill. 2d at 332).

¶ 29 In this case, the plain language of section 18(a)(8)(i) of the Condominium Property Act

states unit owners must receive notice of any meeting of the board of managers concerning the adoption of the proposed annual budget and regular assessments pursuant thereto or to adopt a separate special assessment. 765 ILCS 605/18(a)(8)(i) (West 2012). Section 18(a)(8)(i) does not address the specific situation of the untimely adoption of a budget. The statute also does not address the scope of subjects permissible for a separate special assessment. Williams does not identify any evidence that Cambridge failed to provide the required notice of the meeting adopting the special assessment. Thus, Williams has failed to establish Cambridge violated section 18(a)(8)(i).

¶ 30 Williams also relies on the Cambridge declaration and by-laws, which Williams attached as an exhibit to her brief. As previously noted, exhibits to the brief which are not included in the record on appeal are not to be considered by this court. See *City of Chicago*, 346 Ill. App. 3d at 615, n. 2. Moreover, section 8(q) of the exhibit provided states in part:

> "The failure or delay of the Board to prepare or serve the annual or adjusted budget on the unit owners shall not constitute a waiver or release in any manner of the unit owner's obligation to pay the maintenance and other costs and necessary reserves, as herein provided, whenever the same shall be determined. In the absence of any annual budget or adjusted budget, the unit owners shall pay monthly assessment charges at such rate as the Board may, from time to time, establish or at the then existing monthly rate established for the previous period until the monthly assessment payment which is due more than ten (10) days after such new annual or adjusted budget shall have been mailed or delivered."

Williams relies entirely on the final sentence of this provision, which ignores the first sentence obligating unit owners to pay the maintenance and other costs and necessary reserves, whenever

the annual or adjusted budget is ultimately determined. Accordingly, we conclude Williams has not established the trial court erred in considering the disputed assessment.

¶ 31 CONCLUSION

¶ 32 For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 33 Affirmed.