2017 IL App (1st) 160746-U

No. 1-16-0746

Fifth Division
May 19, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MICHELE B. BUSH,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	No. 16 M1 702117
v.	)	The Honorable David A. Skryd, Judge Presiding.
GARRY MICHAEL COOPER,	)	
Defendant-Appellant.	)	

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

ORDER

¶ 1 *Held:* The judgment of the trial court is affirmed where the trial court properly (1) denied defendant's motion to quash summons, (2) denied his demand for a trial by jury, (3) denied his motion for substitution of judge as a matter of right and for cause, and (4) entered judgment in plaintiff's favor.

¶ 2 *Pro se* defendant Garry Michael Cooper appeals from the trial court's judgment in favor of plaintiff Michele B. Bush on her forcible entry and detainer complaint and its order for

possession of a single-family home located in Chicago. Following a bench trial, the trial court found plaintiff entitled to the possession of the property.

¶ 3 On appeal, defendant argues that (1) the trial court should have conducted an evidentiary hearing on his motion to quash summons and, thereafter, granted the motion; (2) the trial court improperly denied his demand for a trial by jury; (3) the trial court improperly denied his motion for substitution of judge as a matter of right and for cause; and (4) the trial court erred in entering judgment in plaintiff's favor. For the reasons that follow, we affirm.

¶ 4 BACKGROUND

¶ 5 On February 2, 2016, plaintiff filed a forcible entry and detainer complaint against defendant for possession of a single-family home located in Chicago (subject property). The complaint alleged that defendant "was served with a 30 day notice on a month to month tenancy" at the subject property. When defendant "failed to timely vacate" the subject property after the notice period, plaintiff filed the complaint for possession.

¶ 6 On February 18, 2016, plaintiff filed a motion to appoint a special process server, alleging that the sheriff had been unable to serve the eviction summons on defendant. This motion was granted on the same day, appointing STO Investigations, Inc., as the special process server.

¶ 7 On March 8, 2016, Kathleen Di Nunno, an employee of STO Investigations, Inc., filed a return of service, certifying that she served defendant with the eviction summons at the subject property on March 2, 2016, at 9:48 p.m. and that she informed defendant of the contents therein. There is no affidavit of service accompanying the return of service contained in the record on appeal, but the return of service contained language certifying the accuracy of the document under section 1-109 of the Code of Civil Procedure (the Code)

(735 ILCS 5/1-109 (West 2014)). On March 8, 2016, defendant filed a *pro se* motion to quash summons and a notice of motion which set the court date for his motion as the return date stated on the summons. The motion to quash summons requested "dismissal and sanctions as the defendant was never served."

¶ 8 On March 10, 2016, the trial court held a hearing, in which it denied defendant's motion to quash summons and set the trial for March 17, 2016. There is no transcript of the hearing contained in the record on appeal; however, the order entered on March 10, 2016, stated that defendant's "motion to quash service is denied *after hearing*." (Emphasis added.) Furthermore, plaintiff states in her brief that both plaintiff and defendant testified at the hearing, and defendant also indicates in his brief that he testified at the hearing. After the hearing, on the same day, defendant filed a jury demand.

¶ 9 On March 17, 2016, defendant filed a *pro se* answer and counterclaim, a motion for substitution of judge as a matter of right, and a motion for substitution of judge for cause. On the same day, all of the motions were denied, including an oral motion to dismiss[1] and defendant's earlier-filed jury demand, which was denied as not timely filed. The case then went to trial. The record on appeal does not contain a transcript from the trial nor does it contain a bystander's report of the trial proceedings.

¶ 10 After trial, the court entered judgment for plaintiff and against defendant on all claims and entered an order for possession of the subject property.

¶ 11 On March 18, 2016, defendant filed a notice of appeal from the March 17, 2016, judgment and orders and the March 10, 2016, orders. On March 23, 2016, defendant filed an

[1] The record on appeal also contains a written motion to vacate and correct the order entered on March 10, 2016, claiming that defendant's motion to quash summons was incorrectly decided, that no hearing was conducted, and that his motion for an evidentiary hearing was not granted. This motion was filed on March 17, 2016. The record on appeal also contains a written motion for dismissal of the lawsuit filed on March 17, 2016. There are no rulings for these two written motions contained in the record on appeal.

emergency motion for a stay before this court, which was denied. On May 5, 2016, defendant filed a motion to reconsider the emergency motion for a stay, which was also denied. On July 19, 2016, defendant filed an emergency motion for an injunction, which was denied by this court the next day. This appeal follows.

¶ 12 ANALYSIS

¶ 13 On appeal, defendant argues that (1) the trial court should have conducted an evidentiary hearing on the motion to quash summons and, thereafter, granted the motion; (2) the trial court improperly denied his demand for a trial by jury; (3) the trial court improperly denied his motion for a substitution of judge as a matter of right and his motion for a substitution of judge for cause; and (4) the trial court erred in entering judgment in plaintiff's favor. We consider each issue in turn.

¶ 14 I. Motion to Quash Summons

¶ 15 Defendant first argues that the trial court erred by failing to hold an evidentiary hearing on his motion to quash summons and that, had one been held, the trial court would have granted the motion. The standard of review with respect to a motion challenging jurisdiction based on a lack of proper service depends on what proceedings were held at the lower court. When a trial court determines jurisdiction solely on the basis of documentary evidence, the standard of review is *de novo*. See *Equity Residential Properties Management Corp. v. Nasolo*, 364 Ill. App. 3d 26, 31 (2007). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). However, when the trial court conducts an evidentiary hearing as to jurisdiction, some courts have applied a manifest weight of the evidence standard when factual issues are decided. See *Household Finance Corp., III v. Volpert*, 227 Ill. App. 3d 453, 456 (1992). "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." *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151, 154 (2001). Other courts have applied a clearly erroneous standard of review, which permits reversal of the trial court's findings only if the reviewing court is left with the "definite and firm conviction" of an erroneous finding. See *Dargis v. Paradise Park*, 354 Ill. App. 3d 171, 177 (2004). Here, there is no transcript of any hearing contained in the record on appeal; however, based on the order entered on March 10, 2016, stating that it was entered "after hearing" and the briefs from both parties indicating testimony was presented before the court on the issue, it appears that there was an evidentiary hearing. Therefore, we apply the manifest weight of the evidence standard or clearly erroneous standard. However, even under a *de novo* review, we would not find defendant's argument persuasive.

¶ 16 Defendant argues that he was not properly served, arguing that the record does not contain any form of alias summons or substitute service, and the return of service by a special process server here was merely evidence of the facts stated in the return but did not serve as conclusive evidence, relying on *Albers v. Bramberg*, 308 Ill. App. 463, 467 (1941). Under section 2-203 of the Code (735 ILCS 5/2-203 (West 2014)), the certificate of an officer or affidavit of a person that he or she has served a copy of the summons pursuant to section 2-203 is evidence that he or she has done so. Furthermore, in forcible entry and detainer actions, the Code expressly provides that a sheriff's return of service or a "return *** sworn to by the person serving the same" is *prima facie* proof of service under section 9-212 (735 ILCS 5/9-212 (West 2014)). It should not be set aside unless the return is impeached by clear and satisfactory evidence. See *Four Lakes Management & Development*

Co. v. Brown, 129 Ill. App. 3d 680, 683 (1984); *Freund Equipment, Inc. v. Fox*, 301 Ill. App. 3d 163, 166 (1998) (stating that courts are required to indulge every presumption in favor of the return of service and applying the "clear and satisfactory" evidence standard to an affidavit of service of a private investigator); *In re Jafree*, 93 Ill. 2d 450, 455 (1982) (applying the same "clear and satisfactory" evidence standard even though the service was made by an investigator of the Attorney Registration and Disciplinary Commission); *Paul v. Ware*, 258 Ill. App. 3d 614, 617 (1994) (applying the general rule to a process server who was plaintiff's rental agent).

¶ 17 In the case at bar, a special process server filed a return of service, certifying that she served defendant with the eviction summons at the subject property on March 2, 2016, and that she informed defendant of the contents therein. There is no affidavit of service accompanying the return of service contained in the record on appeal, but the return of service contained language certifying the accuracy of the document under section 1-109 of the Code (735 ILCS 5/1-109 (West 2014)). Section 1-109 specifically provides that:

> "[u]nless otherwise expressly provided by rule of the Supreme Court, whenever in this Code any *** affidavit, return or proof of service *** is required or permitted to be verified, or made, sworn to or verified under oath, such requirement or permission is hereby defined to include a certification of such pleading, affidavit or other document." 735 ILCS 5/1-109 (West 2014).

Under section 1-109, "[a]ny pleading, affidavit or other document certified in accordance with this Section may be used in the same manner and with the same force and effect as though subscribed and sworn to under oath." 735 ILCS 5/1-109 (West 2014). Therefore, the return of service at issue, whose accuracy was certified under section 1-109, is *prima facie*

proof of service and should not be set aside unless the return is impeached by clear and satisfactory evidence.

¶ 18 In the case at bar, there is no transcript of a hearing or an affidavit filed by defendant contained in the record on appeal to impeach the validity of the return of service. Thus, we must presume that the trial court's findings were in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Furthermore, even if defendant testified at an evidentiary hearing that he was not served, that uncorroborated testimony alone was insufficient to overcome the presumption of service of process. See *Freund Equipment, Inc.*, 301 Ill. App. 3d at 166. Therefore, we cannot find that the trial court erred in denying defendant's motion to quash service.

¶ 19 II. Jury Demand

¶ 20 Defendant next argues that the trial court erred by denying his jury demand. Here, the issue involves a matter of law as to whether the jury demand was timely, so we review the trial court's decision denying the jury demand *de novo*. See *Laba v. Hahay*, 348 Ill. App. 3d 69, 71 (2004). As noted, *de novo* consideration means we perform the same analysis that a trial judge would perform. *Khan*, 408 Ill. App. 3d at 578. However, we may affirm the trial court's judgment on any basis supported by the record, regardless of the trial court's reasoning. *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009). We do not need to decide the timeliness of the jury demand when there is no issue for a jury to decide. See *Alamo Rent A Car, Inc. v. Ryan*, 268 Ill. App. 3d 268, 277 (1994)

¶ 21 Section 9-108 of the Code provides that, in any case relating to premises used for residence purposes, either party may demand a trial by jury. 735 ILCS 5/9-108 (West 2014) (providing a right to a jury in forcible entry and detainer actions). However, this provision

does not mean that a party is entitled to a jury trial in every forcible entry and detainer suit simply because residential property is involved. *Bleck v. Cosgrove*, 32 Ill. App. 2d 267, 273 (1961). "Before the right to a jury trial is implicated, there must be an issue of fact to be determined." *Alamo Rent A Car, Inc.*, 268 Ill. App. 3d at 277; *Department of Revenue v. Steacy*, 38 Ill. 2d 581, 582 (1967). Where no issue of fact exists, the defendant does not have a right to trial by jury. *Cody v. Turner*, 48 Ill. App. 2d 37, 41 (1964) (holding that the trial court correctly dismissed the jury demand where there was no issue of fact); *Diversity Liquidating Corp. v. Neunkirchen*, 370 Ill. 523, 527 (1939). "The function of a jury is to decide disputed issues of fact. *** [I]t is obvious that where no issue is presented there can be no denial of the right to a jury trial." *Diversity Liquidating Corp.*, 370 Ill. at 527. Therefore, we consider whether there was a triable issue of fact in the instant case.

¶ 22 In the case at bar, there is no dispute that plaintiff owned the subject property. The only issue concerning possession raised by defendant is his claim that he was in a common-law relationship with plaintiff since 2010 and that, after their relationship ended, he was entitled to sole possession of the subject property. In defendant's counterclaim, defendant alleges that "[t]he Plaintiff and the Defendant have in place an agreement for possession of the premises at issue, the marital home *** in the event of a dissolution of the marriage. The agreement gives the premises at issue, the marital home *** to the Defendant." However, real estate agreements are required to be in writing to be enforceable (*Hubble v. O'Connor*, 291 Ill. App. 3d 974, 983 (1997)), and no written agreement was attached to defendant's counterclaim. In addition, common-law marriages are not recognized in Illinois. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 30. As a result, there is no factual issue for the jury to decide.

¶ 23 The purpose of forcible entry and detainer proceedings is to provide a speedy remedy to allow a person who is entitled to the possession of certain real property to be restored to possession. *Campana Redevelopment, LLC v. Ashland Group, LLC*, 2013 IL App (2d) 120988, ¶ 13. It is a limited proceeding, focusing on the central issue of possession. *Campana Redevelopment, LLC*, 2013 IL App (2d) 120988, ¶ 13. The only questions that are to be answered in such a proceeding concern which party is entitled to immediate possession and whether a defense that is germane to the distinctive purpose of the action defeats plaintiff's asserted right to possession. *Campana Redevelopment, LLC*, 2013 IL App (2d) 120988, ¶ 13. Our supreme court has defined "germane" as "closely allied; closely related, closely connected; appropriate." *Rosewood Corp. v. Fisher*, 46 Ill. 2d 249, 257 (1970). Claims that are germane to the issue of possession generally fall into one of four categories: (1) claims asserting a paramount right to possession; (2) claims denying a breach of the agreement on which the plaintiff bases the right to possession; (3) claims challenging the validity or enforceability of the agreement; and (4) claims questioning the plaintiff's motivation for bringing the action. *Campana Redevelopment, LLC*, 2013 IL App (2d) 120988, ¶ 16. Defendant's claims do not fall into any of these categories.

¶ 24 Defendant argues that section 9-101 of the Code required plaintiff to "plead and prove that the Defendant gained possession of the property by force and that the Defendant is withholding possession of the property from the Plaintiff." (Emphases omitted.) See 735 ILCS 5/9-101 (West 2014) (providing that "No person shall make an entry into lands or tenements except in cases where entry is allowed by law, and in such cases he or she shall not enter with force, but in a peaceable manner"). However, section 9-101 does not provide a cause of action, but regulates the proper way of restoring the possession of a property under

the Code; namely, if a party is entitled to the possession of the property under the Code, she shall enter in a peaceable manner. Furthermore, section 9-102 of the Code lists the circumstances in which a forcible entry and detainer action can be maintained, and provides, in pertinent part:

> "(a) The person entitled to the possession of lands or tenements may be restored thereto under any of the following circumstances:
>
> * * *
>
> (4) When any lessee of the lands or tenements, or any person holding under such lessee, holds possession without right after the termination of the lease or tenancy by its own limitation, condition or terms, or by notice to quit or otherwise." 735 ILCS 5/9-102 (West 2014).

¶ 25 In the case at bar, Illinois does not recognize common-law marriage. *Blumenthal*, 2016 IL 118781, ¶ 30. Therefore, merely living together did not create a marital relationship between plaintiff and defendant. See *Blumenthal*, 2016 IL 118781, ¶ 30. When a person obtains possession of real property under verbal permission to live there and no time is fixed for the duration of such possession, and no rent is paid or agreed to, that person becomes a tenant at will. *Herrell v. Sizeland*, 81 Ill. 457, 459 (1876) (a man and his wife, moving into the house of another, taking care of him until his death, paying no rent, and not agreeing on any payment or term, were mere tenants at will). A tenant at will is not entitled to a notice to quit in order to terminate his tenancy, and a mere demand is all that the law requires under such circumstance. *Herrell*, 81 Ill. at 460. On the other hand, possession and payment of monthly rent creates a month-to-month tenancy, which cannot be terminated by the landlord without

serving the tenant with a 30 days' notice. *Dobsons Inc. v. Oak Park Notational Bank*, 86 Ill. App. 3d 200, 204 (1980).

¶ 26 However, where there is no landlord and tenant relationship, the owner need not provide any notice to demand possession before beginning an action for forcible entry and detainer, or ejectment. See *Herrell*, 81 Ill. at 460.

¶ 27 In the case at bar, there is no dispute that plaintiff allowed defendant to live at her property until she requested him to vacate. In addition, there was no written lease between the parties. There is no evidence in the record on appeal concerning the payment or term of any tenancy. Plaintiff's complaint alleges that defendant was given a month-to-month tenancy and further alleges that a 30 days' notice was served. Defendant here denied those allegations in his answer. Therefore, regardless of the nature of the tenancy, when defendant denied the allegations of a landlord and tenant relationship in his answer and claims the ownership of the subject property in his counterclaim, defendant waived any issues as to the adequacy of any notice. See *Herrell*, 81 Ill. at 460. Defendant's tenancy, if any, terminated when plaintiff demanded that he vacate.

¶ 28 It is the responsibility of the appellant in this case to provide a complete record to the reviewing court, and doubts that arise from the incompleteness of the record will be resolved against the appellant. See *In re County Treasurer & ex Officio County Collector*, 373 Ill. App. 3d 679, 684 (2007). Thus, his defenses did not constitute a germane claim that defeats plaintiff's asserted right to possession. As a result, plaintiff was entitled to the possession of the subject property. See *Campana Redevelopment, LLC*, 2013 IL App (2d) 120988, ¶ 13. We find that there was no triable issue of fact and, accordingly, the trial court did not err in denying defendant's jury demand.

¶ 29 III. Substitution of Judge

¶ 30 Defendant next argues that the trial court erred by denying his motion for substitution of judge as a matter of right (735 ILCS 5/2-1001(a)(2)(i) (West 2014)) and his motion for substitution of judge for cause (735 ILCS 52-1001(a)(3) (West 2014)).

¶ 31 We first review the motion for substitution of judge as a matter of right. Motions for substitution of judge as a matter of right are governed by section 2–1001 of the Code, which states in pertinent part:

> "(a) A substitution of judge in any civil action may be had in the following situations:
>
> ***
>
> (2) Substitution as of right. When a party timely exercises his or her right to a substitution without cause as provided in this paragraph (2).
>
> (i) Each party shall be entitled to one substitution of judge without cause as a matter of right.
>
> (ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties." 735 ILCS 5/2–1001(a)(2) (West 2014).

" 'The substitution of judge as a matter of right is absolute where the motion requesting the substitution is filed before the judge presiding in the case has made a substantial ruling.' " *Scroggins v. Scroggins*, 327 Ill. App. 3d 333, 336 (2002) (quoting *Alcantar v. Peoples Gas Light & Coke Co.*, 288 Ill. App. 3d 644, 648 (1997)). A trial court has no discretion to deny a

proper motion for substitution of judge as a matter of right. *Niemerg v. Bonelli*, 344 Ill. App. 3d 459, 464 (2003).

> "However, to prohibit litigants from 'judge shopping' and seeking a substitution only after they have formed an opinion that the judge may be unfavorably disposed toward the merits of their case, a motion for substitution of judge as [a matter] of right must be filed at the earliest practical moment before commencement of trial or hearing and before the trial judge considering the motion rules upon a substantial issue in the case." *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 245-46 (2006).

¶ 32 In the case at bar, defendant's motion for substitution was filed after the trial court denied defendant's motion to quash summons. Defendant argues his motion to quash summons was a preliminary motion challenging the jurisdiction of the trial court, not a substantive ruling on issues in the case, and, therefore, his motion for substitution of judge as a matter of right should have been granted. The parties dispute whether the ruling on the motion to quash summons is "substantial." The issue of whether there had been a ruling on a substantial issue in the case is a question of law to which the reviewing court applies a *de nov*o standard of review. *Niemerg*, 344 Ill. App. 3d at 464. As noted, *de novo* consideration means we perform the same analysis that a trial judge would perform. *Khan*, 408 Ill. App. 3d at 578.

¶ 33 A judge's ruling is considered substantial if it is directly related to the merits of the case, which depends on the facts of the specific case. *In re Austin D.*, 358 Ill. App. 3d 277, 281 (2005) ("[W]e nonetheless find that the temporary-custody order was not a substantive ruling [here]. We do not hold that the temporary-custody order can never be a substantive ruling. In many cases, it may be a substantive ruling."). Examples of a ruling on a substantial issue vary from a ruling on a motion to dismiss or other pretrial ruling of law, to the movant's

participation in discussion concerning the issues during which the trial court indicated a position on at least one issue. *Rodisch v. Commacho-Esparza,* 309 Ill. App. 3d 346, 351 (1999). Moreover, a trial court's ruling on a discovery motion is considered "substantial" when it pertains to evidentiary matters and reveals the court's interpretation of a supreme court rule or the court's opinion as to the admissibility of extrinsic evidence. *In re Estate of Hoellen*, 367 Ill. App. 3d at 246 (concluding that the ruling on an emergency motion was substantial where the motion compelled respondent to produce "signed" copies of the trust, powers of attorney, and last will); but see *In re Marriage of Birt*, 157 Ill. App. 3d 363, 368-69 (1987) (holding that the rulings on a motion to quash a subpoena and a motion for a protective order were not substantial where the motions were not related to the merits of the divorce case).

¶ 34 In addition, even if the trial court did not rule on a substantial issue, "a motion for substitution of judge as [a matter] of right may still be denied, if before filing the motion, the moving party had an opportunity to test the waters and form an opinion as to the court's disposition toward his claim." *In re Estate of Hoellen*, 367 Ill. App. 3d at 246.

¶ 35 In the case at bar, defendant's motion for substitution of judge as a matter of right was filed before trial, but after the evidentiary hearing on defendant's motion to quash summons, when the ruling the trial court had made was concerning the motion to quash summons. A motion to quash summons concerns the threshold issue of the trial court's jurisdiction over defendant and is not directly related to the merits of the case; therefore, the ruling on a motion to quash summons is generally not substantial. See *In re Marriage of Birt*, 157 Ill. App. 3d at 368-69. However, in the case at bar, the trial court conducted an evidentiary hearing on the motion to quash summons. Defendant may have had an opportunity to test the

waters and form an opinion as to the court's reaction to his claim. Here, the record does not contain a transcript, bystander's report, or agreed statement of facts reflecting the testimony presented at the hearing. Since we do not know what exactly took place at the hearing, we cannot determine what occurred before the trial court. Given the limited record, we must presume that the trial court had adequate reason to deny defendant's motion. *Foutch*, 99 Ill. 2d at 392. Accordingly, we affirm the trial court's ruling denying the motion for substitution of judge as a matter of right.

¶ 36 We now turn to defendant's motion for substitution of judge for cause. Motions for substitution of judge for cause are governed by section 2–1001(a)(3) of the Code, which states in pertinent part:

> "(3) Substitution for cause. When cause exists.
>
> (i) Each party shall be entitled to a substitution or substitutions of judge for cause.
>
> (ii) Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant.
>
> (iii) Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition. The judge named in the petition need not testify but may submit an affidavit if the judge wishes. If the petition is allowed, the case shall be assigned to a judge not named in the petition. If the petition is denied, the case shall be assigned back to the judge named in the petition." 735 ILCS 5/2-1001(a)(3) (West 2014).

¶ 37 Effective January 1993, this section of the Code was amended to provide that a trial judge facing a petition for substitution is required to refer the petition to a "judge other than the judge named in the petition." 735 ILCS 5/2–1001(a)(3)(iii) (West 2014). Since the issue here rests on the interpretation and application of section 2-1001(a)(3) of the Code, which is a question of law, we review it *de novo*. See *In re Estate of Wilson*, 238 Ill. 2d 519, 552 (2010). As noted, *de novo* consideration means we perform the same analysis that a trial judge would perform. *Khan*, 408 Ill. App. 3d at 578.

¶ 38 Defendant argues that the filing of the petition for substitution of judge for cause mandated an immediate hearing by another judge to determine if cause existed pursuant to section 2-1001(a)(3)(iii). However, our supreme court has instructed that "a party's right to have a petition for substitution [of judge for cause] heard by another judge is not automatic." *In re Estate of Wilson*, 238 Ill. 2d at 553. A judge may deny a petition without referring it to another judge if the petition fails to meet the threshold requirements. *In re Estate of Wilson*, 238 Ill. 2d at 567. Specifically, the trial court may deny the petition if it (1) was not timely filed, (2) failed to include an affidavit, or (3) alleged bias not stemming from an extrajudicial source. *In re Estate of Wilson*, 238 Ill. 2d at 553.

¶ 39 "[A]n affidavit is simply a declaration, [under] oath, in writing sworn to before some person who has authority under the law to administer oaths. A writing which does not appear to have been sworn to before any officer does not constitute an affidavit." (Internal quotation marks omitted.) *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 493-94 (2002); *People v. Smith*, 22 Ill. App. 3d 377, 380 (1974); *People ex rel. McCline v. Meyering*, 356 Ill. 210, 214 (1934); *Figge v. Rowlen*, 185 Ill. 234, 238 (1900). An affidavit without notarization can be "minimally sufficient" under Supreme Court Rule 191 (Ill. S. Ct. R. 191 (eff. Jan. 4,

2013)). *Northrop v. Lopatka*, 242 Ill. App. 3d 1, 7 (1993). However, our Illinois Supreme Court has distinguished Rule 191 and reaffirmed that the traditional requirements of an affidavit require notarization and should be followed outside of the context of Rule 191. See *Roth*, 202 Ill. 2d at 495-96. In *Roth*, the supreme court compared Rule 191 and Rule 315 (Ill. S. Ct. R. 315 (eff. Jan. 1, 2015)), and found that unlike Rule 191 which sets specific requirements for an affidavit, but omits reference to notarization, Rule 315 sets forth no specific affidavit requirements, stating only that "an affidavit" of intent is required. *Roth*, 202 Ill. 2d at 496. "[W]e cannot excuse the noncompliance with the traditional requirements of an affidavit because Rule 315(b), unlike Rule 191(a), gives absolutely no guidance as to what is required of the party filing the affidavit." We find section 2-1001(a)(3) more similar to Rule 315, which sets forth no specific affidavit requirements, stating only that a petition shall be verified by "the affidavit." Therefore, the traditional requirements of notarization are applicable here.

¶ 40 In the case at bar, there was no affidavit attached to defendant's motion for substitution of judge for cause. We note that the motion included an area for notarization, and it was signed by defendant, without notarization. At no time did defendant request leave to obtain a notarization. Defendant had more than enough time to find a notary and never attempted to cure the notarization defect. As a result, we must conclude that this document cannot be considered an affidavit. See *Roth*, 202 Ill. 2d at 493-94.

¶ 41 In addition, if a document is properly certified in accordance with section 1-109 of the Code, it "may be used in the same manner and with the same force and effect as though subscribed and sworn to under oath." 735 ILCS 5/1-109 (West 2014). In order to be considered properly certified, the document "shall subscribe to a certification in substantially

the following form: Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true." 735 ILCS 5/1-109 (West 2014).

¶ 42 In the case at bar, defendant's motion for substitution of judge for cause did not contain language indicating it was certified in accordance with section 1-109, and the document included in the motion was not substantially in the form provided in section 1-109. Thus, the document did not satisfy the requirements under section 1-109 to be used as an affidavit. Accordingly, this petition was not properly verified by an affidavit of the applicant, as required by section 2-1001(a)(3) of the Code.

¶ 43 Moreover, it is well established that a trial judge is presumed to be impartial, and the party asserting bias bears the burden of overcoming that presumption by presenting evidence of a personal bias stemming from an extrajudicial source and evidence of prejudicial trial conduct. *Illinois Department of Healthcare & Family Services ex rel. Alu v. Ikechukwu*, 2011 IL App (1st) 102650, ¶ 42. "Where bias or prejudice is invoked as the basis for seeking substitution, it must normally stem from an extrajudicial source, *i.e.*, from a source other than from what the judge learned from her participation in the case before her." *In re Estate of Wilson*, 238 Ill. 2d at 554. It is also well settled that "[a] judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality." *In re Estate of Wilson*, 238 Ill. 2d at 554.

> "[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or

partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." (Emphases in original.) (Internal quotation marks omitted.) *In re Estate of Wilson*, 238 Ill. 2d at 554.

¶ 44 In *In re Estate of Wilson*, our supreme court found that allegations in a petition did not suffice to establish cause for substitution of judge where, based on previous remarks the trial judge made following the movant's testimony in guardianship proceedings, the petition alleged that the trial judge might be predisposed not to believe the movant at a hearing on pending motions to revoke the powers of attorney under which the movant was appointed. *In re Estate of Wilson*, 238 Ill. 2d at 555. Our supreme court found that "[a]n assessment of a party's credibility *** based on the evidence presented in the course of the proceedings is a matter which is clearly within the purview of the trial court and does not rise to the level of deep-seated favoritism or antagonism that would make fair judgment impossible." (Internal quotation marks omitted.) *In re Estate of Wilson*, 238 Ill. 2d at 555.

¶ 45 In the case at bar, we do not have a transcript of the proceedings, and as a result, we must presume the trial court's findings were in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. Other than the trial court's rulings, defendant's only arguments to support his assertion of bias and prejudice of the trial judge was that the trial judge "responded to the defendant with a general tone of disrespect," that the trial judge "ask[ed] the plaintiff what date was convenient for the Plaintiff" after denying defendant's motion to quash service, and told defendant to "go 'sit down' " after denying his jury demand. None of those claims reveals an opinion that derives from an extrajudicial source or demonstrates a high degree of favoritism or antagonism so as to make fair judgment

impossible and, thus, defendant failed to adequately allege cause for substitution. See *In re Estate of Wilson*, 238 Ill. 2d at 554-55.

¶ 46 Consequently, the trial court had no obligation under the statute to refer the matter to another judge for a hearing. See *In re Estate of Wilson*, 238 Ill. 2d at 567. As a result, we cannot find that the trial court erred in denying defendant's motion for substitution of judge for cause.

¶ 47 Accordingly, we affirm the trial court's decision on both motions for substitution of judge as a matter of right and for cause. Defendant's argument that all subsequent rulings of the trial court were void after the denial of his motions to substitute judge must likewise fail, since we have already rejected the premise for that argument.

¶ 48 IV. Merits of Forcible Entry and Detainer Action

¶ 49 Defendant also argues that the trial court erred in entering judgment in plaintiff's favor. As noted in the section concerning the denial of defendant's jury demand, there was no triable issue of fact and plaintiff was entitled to the sole possession of the subject property. Accordingly, we cannot find that the trial court erred in entering judgment in plaintiff's favor.

¶ 50 V. Other Motions

¶ 51 Finally, defendant raises several issues that we need only briefly discuss. Defendant argues that the trial court erred in denying his request to file a special appearance and answer, denying his motion to vacate and correct the order entered on March 10, 2016, and motion to dismiss the lawsuit, denying his access to a court reporter to record the proceedings, and that the trial judge was racially biased against him.[2]

[2] Defendant also argues that the trial court denied his request for an evidentiary hearing on the motion to quash summons. However, as noted, the briefs from both parties indicate testimony was presented before the court on the issue. Therefore, we have no need to discuss this issue.

¶ 52 We first review defendant's request to file a special appearance and answer. There is no transcript of the proceedings or written request filed with the court; however, defendant states in his brief that he requested, and was later denied, leave to file a special appearance and answer after the denial of his motion to quash summons. We find the denial proper. First, a special appearance is an appearance for the purpose of questioning the jurisdiction of the court, which enables a party to present a challenge to jurisdiction without thereby creating it and waiving the point. *Francisco v. Francisco*, 83 Ill. App. 3d 594, 597 (1980). Therefore, after the denial of the motion to quash summons, the court had already established jurisdiction over defendant and there was no need to file a special appearance. Furthermore, the current version of section 2-301 of the Code, amended in 2000, no longer requires or even provides for the filing of a special appearance to preserve a jurisdictional objection, and allows a defendant to object to the court's jurisdiction over the defendant "on the ground of insufficiency of process or insufficiency of service of process, by filing a motion to dismiss the entire proceeding *** or by filing a motion to quash the service of process," prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear. 735 ILCS 5/2-301 (West 2014). Therefore, there was no need to file a "special appearance" pursuant to the current version of section 2-301. 735 ILCS 5/2-301 (West 2014). Additionally, Supreme Court Rule 181(b)(2) provides that "[i]f the defendant appears [in an action for forcible entry or detainer], he or she need not file an answer unless ordered by the court, and when no answer is ordered, the allegations of the complaint will be deemed denied, and any defense may be proved as if it were specifically pleaded." Ill. S. Ct. R. 181(b)(2) (eff. Jan. 4, 2013). Therefore, we cannot find that the trial court erred in refusing to give defendant time to file an answer.

¶ 53 Furthermore, the record on appeal does not contain any rulings for defendant's motion to vacate and correct the order entered on March 10, 2016, and motion to dismiss the lawsuit. There is also nothing in the record regarding his request for a court reporter to record the proceedings, nor was defendant entitled to one under the law. Further, defendant does not provide any evidence to support his allegation that the trial judge was racially biased against him. Therefore, we must resolve the doubts that arise from the incompleteness of the record against defendant and find his arguments without merit. *In re County Treasurer*, 373 Ill. App. 3d at 684.

¶ 54 Finally, we reject defendant's argument that jurisdiction over the parties and the subject matter was more properly heard in the family division, and that the order of possession issued by the trial court is void for vagueness. There is one circuit court, despite the fact that it is divided into divisions. *In re M.M.*, 156 Ill. 2d 53, 56 (1993). Furthermore, forcible entry and detainer cases are properly heard in the municipal division, as occurred in the case at bar. We also cannot find that the trial court's order was vague, as it clearly entered judgment in plaintiff's favor and against defendant.

¶ 55 CONCLUSION

¶ 56 For the foregoing reasons, we find that the trial court properly denied defendant's motions, including motion to quash summons, jury demand, and motions for substitution of judge, and that the trial court properly entered judgment in plaintiff's favor.

¶ 57 Affirmed.