2017 IL App (2d) 160878-U
No. 2-16-0878
Order filed October 17, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

KENNETH NEIMAN and JANICE NEIMAN,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 13-L-594
	)	
DIANE LANE and KIMBERLY ARNOLD,	)	Honorable
	)	Michael B. Betar,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Hudson and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court lacked jurisdiction to award defendants the return of their security deposit, as defendants had filed no pleading for that relief; (2) the trial court properly granted judgment for defendants on plaintiffs' claim that they breached their lease, as plaintiffs did not establish that defendants' sink became clogged through misuse or neglect or that they vacated the premises without cause; (3) plaintiffs did not show that the trial judge abused his discretion in conducting the trial: given the nature of the dispute, the judge was entitled to set a time limit; his comments about a defendant's request to breastfeed in court did not support plaintiffs' claim that he would then be biased in defendants' favor; in the absence of detail about excluded evidence, we could not say that the judge erred in excluding it.

¶ 2 Plaintiffs, Kenneth Neiman and Janice Neiman, appeal from a judgment relating to a landlord-tenant dispute that denied them breach-of-contract damages and required them to return

the security deposit to defendants, Diane Lane and Kimberly Arnold. Plaintiffs assert that the order to return the security deposit was improper because defendants never sought such an order. They also assert a variety of bases on which they ask us to hold that the denial of damages was improper. We agree that the court erred in ordering the return of the security deposit. Without any request from defendants, the court lacked subject-matter jurisdiction to enter that order, so we must vacate it. However, we are unpersuaded that there was any error in the denial of damages, so we affirm the remainder of the judgment.

¶ 3 I. BACKGROUND

¶ 4 Plaintiffs' first amended complaint included several claims. However, as of May 17, 2016, only a breach-of-contract claim remained before the court: plaintiffs alleged that defendants ceased to pay rent and "without cause, disgorged [*sic*] possession of the premises." Defendants filed an answer and affirmative defenses, among which were that plaintiffs had breached the lease by demanding that defendants comply with an improper interpretation of the lease or else vacate the premises. Plaintiffs filed their original complaint on August 16, 2013, but the small-claims trial did not take place until June 2016. Plaintiffs appeared *pro se*, with Kenneth taking the more active part; defendants had representation.

¶ 5 The core facts of the case here are mostly undisputed. On April 12, 2013, defendants signed a lease with a term of April 2013 to April 2015 for a single-family house in Deerfield. The monthly rent was $1,700. The security deposit was $2,000, including a pet deposit. According to the lease, the "landlord" or "lessor" was Mercantile Brokerage Company. However, plaintiffs owned the house and Kenneth was the sole owner and primary agent of Mercantile. According to Kenneth, Mercantile made the lease on behalf of plaintiffs.

Defendants, with their young child and their two dogs, moved in shortly after they signed the lease.

¶ 6 The lease included a clause concerning repair:

> "REPAIR The Lessee covenants and agrees with Lessor to take good care of and keep in clean and healthy condition the Premises and their fixtures, and to commit or suffer no waste therein; that no changes or alterations of the Premises shall be made or partitions erected, nor walls papered without the consent in writing of Lessor; that *Lessee will make all repairs required to the *** plumbing work, [and] pipes, and fixtures belonging to the Premises, whenever damage or injury to the same shall have resulted from misuse or neglect*; and Lessee agrees to pay for any and all repairs that shall be necessary to put the Premises in the same condition as when he entered therein reasonable wear and loss by fire excepted, and the expense of such repairs shall be included within the terms of this lease." (Emphasis added.)

It also included a limitation-of-liability clause:

> "Except as provided by Illinois statute, the Lessor shall not be liable for any damage occasioned by failure to keep the Premises in repair, and shall not be liable for any damage done or occasioned by or from plumbing *** or the bursting, leaking or running from any *** waste pipe, in *** the Premises."

The lease prohibited parking more than one car in the driveway, but defendants said that they had been cleared to leave both their cars in the driveway while they used the garage as a staging area to move their possessions into the house.

¶ 7 The first few months of defendants' tenancy were largely uneventful. Defendants had contacted Kenneth about unwanted bags of cement in the garage, ants in the house, and a dripping faucet. None of this led to any discussion of the lease terms.

¶ 8 On July 4, 2013—a Thursday—the kitchen sink stopped draining properly. According to defendants, the drain was backing up, forcing wastewater into the dishwasher, which also did not drain properly. Defendants e-mailed Kenneth about the problem, mentioning that there was mold under the sink. He came over the next day, looked at the sink, and removed the trap, but was unable to make it drain properly. According to him, he observed excessive food waste in the pipes—the sink had a garbage disposal. Defendants told Kenneth that they had used half a bottle of Drano in an attempt to clear the clog. Kenneth said that he would get back to defendants after the holiday weekend.

¶ 9 On July 9, 2013, Kenneth sent defendants an e-mail saying that the lessor was not responsible for their having clogged the sink. He quoted the limitation-of-liability clause and asserted that it was "an unacceptable lease violation" for them to have changed the showerhead. The closing line was, "In light of the above, please let me know what arrangement you will be making to cure your responsibilities [*sic*] as described."

¶ 10 A series of communications followed. Defendants took the position that repairs were the lessor's responsibility. Kenneth's response was that the limitation-of-liability clause meant that the lessees were responsible for all repairs to plumbing. He said that he would "no longer respond to frivolous demands."

¶ 11 On July 17, 2013, Kenneth sent defendants an e-mail headed "LEASE VIOLATION." He noted that he was placing a "For Sale/For Rent" sign in the yard of the house and said that it should not be disturbed. He noted lease violations that included the presence of two cars in the

driveway, personal property in front of the access to a utility crawlspace, and the failure to supply him with information about the dogs. The e-mail further stated:

> "You are forbidden from using 'Capps Plumbing & Sewer' *** due to excessive adverse comments from prior apparent 'victims'. *** You also lack a written contract or an estimate. Thus, I am unable to confirm your ability to pay for any work particularly since you refuse to assume liability for the work.
>
> Should you locate an acceptable service as required under the lease and provide me with the anticipated costs, you are prohibited from expressly or implying [*sic*] that you are acting as agent for the Landlord or create a liability for the Landlord. I will confirm that fact before any work is done.
>
> As a result of the above, you remain in violation of the lease."

¶ 12 Defendants then hired a lawyer, who, on July 18, 2013, wrote to Kenneth suggesting that the best option would be an agreed mutual termination of the lease.

¶ 13 On July 22, 2013, Kenneth, "individually and as agent for Mercantile Brokerage Company," sent defendants a 10-day notice of termination of the lease:

> "Pursuant to 735 ILCS § 5/9-210 and the above-referenced Lease Agreement and Rider dated April 12, 2013, you are hereby notified that in consequence of your default in failing to adhere to the terms of said Lease Agreement, including and Without limitation: (1) violation of [the repair clause] of the Lease Agreement, (2) failing to repair plumbing pipes, (2) [*sic*] making unauthorized changes and/or alterations to the premises, (3) [*sic*] failing to make all areas of the premises accessible to the Landlord, (4) [*sic*] damaging a wooden fence door now occupied by you *** and the undersigned has elected to terminate the above Lease Agreement and Rider, you are hereby notified to quit and

> deliver up possession of the same to me within 10 days of this date or by August 1, 2013[]."

¶ 14 On August 2, 2013, Kenneth sent defendants notice that he was (again) "elect[ing] to terminate" the lease, this time based on defendants' failure to pay rent on August 1, 2013. This notice, unlike the earlier notice, suggested that the termination could be "waiv[ed]" if defendants cured the default, but also stated that the notice did not change anything in the July 22, 2013, notice to vacate.

¶ 15 On August 8, 2013, defendants delivered a letter to Kenneth informing him that they would vacate the house by no later than August 15, 2013. They denied any breach of the lease and continued to assert that the lessor bore the responsibility for fixing the plumbing. Nevertheless, they had hired Roto-Rooter to clear the pipe.

¶ 16 Defendants included Roto-Rooter's invoice with the August 8, 2013, letter. Roto-Rooter's technician had come on July 19, 2013, and had charged $368 for his work. The invoice had two notations:

> "K/S line was clogged due to build-up & some roots which comes [*sic*] from trees and end up in pipes due to roots wanting water etc."
>
> "Need to take P-trap off and rod w/ Power Mac into kitchen line approx. 30 ft to [illegible] line. Flow was restored[.] [P]ulled back some roots from which means [*sic*] mainline should be rodded also."

¶ 17 On August 12, 2013, defendants informed Kenneth that they had left the house. They requested return of the security deposit and reimbursement for Roto-Rooter's work. They conceded that they owed half a month's rent for August and said that this could be deducted from the security deposit.

¶ 18 Kenneth hired AA Anthony's Plumbing to work on the house after defendants vacated it. Kenneth sought to admit a document the plumber had produced, arguing that it would show that defendants had damaged the pipes. The court ruled that no hearsay exception applied to the document.

¶ 19 Two of plaintiffs' claims of error are based on the court's management of the trial. Specifically, they assert (1) that the court set an unfairly short time limit for the trial, which it compounded by its handling of interruptions and (2) that it responded inappropriately to Arnold's request to breastfeed her infant son. We therefore describe relevant parts of the trial.

¶ 20 On the day of the trial, after off-the-record discussions, the court informed the parties that the trial would begin at 1:45 p.m. Plaintiffs would have until 3:15 p.m. to present their case, and defendants would have until 4:45 p.m. Kenneth had exhibits numbered up to 20. He sought to introduce each individually, primarily through the testimony of Arnold and then of Lane. The court occasionally interrupted to remind the parties of the time limit. It interrupted Kenneth several times to ask him what the relevance of his evidence was or to get specific information.

¶ 21 Kenneth asked multiple questions about defendants' pre-July 4, 2013, communications with him. While he was questioning Arnold about what she had said to him about the bags of cement in the garage, the bailiff announced to the court that defendants' infant child needed to be fed. The following colloquy ensued:

> "THE BAILIFF: Your Honor, there's a question. The baby needs to be breastfed, whether that's going to be at the bench or in the courtroom.
>
> THE COURT: No, just go into the conference room.
>
> THE BAILIFF: [Arnold's] the one. I just wanted—she was asking.
>
> THE COURT: Oh, you're the one that's got to feed the baby?

THE WITNESS [Arnold]: I'm comfortable doing it here. Nobody's going to see it if I'm sitting here. We can keep going.

THE COURT: *** [Y]ou're on the witness stand.

THE WITNESS: I can hold him and do it.

THE COURT: I don't feel comfortable doing it. You don't have bottles?

THE WITNESS: No, he doesn't take bottles.

MR. NEIMAN: I don't mean to be disrespectful. I'm a parent myself, but—

THE COURT: All right, Mr. Neiman, hang on. The Court doesn't want you breastfeeding the baby while you're on the witness stand. I don't think that's appropriate. I don't think there's going to be any—

THE WITNESS: It's my legal right to breastfeed anywhere that I'm—

THE COURT: I'm just trying to have the decorum of the courtroom.

THE WITNESS: I know, I know. That's why I can cover, I can use the blanket so you can't see anything. I'm offering that, but if you're not comfortable—

THE COURT: Does the baby ever drink out of a bottle?

THE WITNESS: No.

THE COURT: Out of like a pump, like when you pump into a bottle?

THE WITNESS: No, he does not.

THE COURT: Let's just see how it goes. The baby doesn't appear to be—is there some kind of a medical emergency where the baby needs to be fed right now?

THE WITNESS: Not right now.

THE COURT: Because he's not—is it a boy?

THE WITNESS: Yes.

THE COURT: He doesn't appear to be fussing to me, does he, counsel?

MR. STRZELECKI: No.

THE COURT: I don't hear anything. If he starts getting really fussy, we'll revisit the issue.

THE WITNESS: Okay. No, that's fine, Judge."

Kenneth then continued questioning Arnold about the cement bags, ending that questioning only when the court intervened, first asking Arnold whether the cement bags were why she and Lane had "vacated the premises," and then suggesting to Kenneth that, given the time constraints, he might "want to evaluate what to emphasize in [his] case."

¶ 22 Kenneth turned to questions about the clogged sink and began to introduce his documentary exhibits. This process had reached the communication of July 17, 2013, when the court brought attention to the baby again:

"THE COURT: Is everything okay with the child? Do you need to feed him? Let the record reflect the baby is starting to get fussy. And ma'am, with all due respect, how old is the child?

THE WITNESS: Seven weeks.

THE COURT: Why you would bring a seven-week-year-old [*sic*] child into an all afternoon trial, I don't understand. So, what are we going to do regarding—we're on the record regarding feeding the baby? How much longer is your direct testimony going to go?

MR. NEIMAN: I have probably a good 20 minutes. There's about a half a dozen further pieces of correspondence.

THE COURT: All right. Can we use the other defendant instead?

MR. NEIMAN: I have no objection to making that attempt.

THE COURT: All right. Let's switch out the defendants and then but if you want to call—what's your last name?

THE WITNESS: Arnold.

* * *

THE COURT: So, now Ms. Arnold is released from the witness stand so she can feed the baby."

After this interruption, the proceedings resumed with Lane as plaintiffs' witness. No disruption in Kenneth's questioning is apparent in the transcript.

¶ 23 The court slightly extended the time it allowed plaintiffs, based on time it had taken to check an evidentiary matter. The parties finished with no time left for closings.

¶ 24 The court summarized the evidence. It found that the lease did not give the lessor the right to require the tenants to get approval of tradespeople doing repairs. It accepted the conclusion of the Roto-Rooter technician that the cause of the sink backing up was roots in the drain. It suggested that defendants were complying with the demand letter sent by Kenneth when they vacated the premises. It ruled that the lack of a functioning kitchen sink (and related lack of a dishwasher) was such that defendants were excused from paying August rent. Defendants also were not liable for September rent:

"When landlords are renting *** houses and things, when they're between tenants, there's a natural lapse of time from time to time between one tenant and another. They have to market the property, they may have to go in and put on a fresh coat of paint, clean the place up a little bit, ordinary wear and tear. There's sometimes a natural lapse of time, which is expected. So, I'm not holding the tenants liable for September rent."

¶ 25 The court held that, because the brokerage fee was effectively something that Kenneth had paid himself, it would not allow it. It also did not allow plaintiffs damages for the $100-a-month difference in rent: "And the market rate, apparently the reasonable value of the home was $1,600. So, the Court's going to abide by that." Finally, it ordered plaintiffs to return the security deposit within 14 days.

¶ 26 Plaintiffs filed a motion to reconsider, asserting, among other things, (1) that the court erred in ordering them to return the security deposit when defendants had never asked for it, (2) that the court did not allow enough time for the trial, and (3) that the court's comments to Arnold about the infant's feeding had hurt plaintiffs by motivating the court to make up for its "inflammatory" remarks by favoring defendants.

¶ 27 Kenneth, in arguing that the court had miscalculated damages, explained his understanding of the 10-day notice:

> "The ten-day notice was if they were contending there was a problem with the sink or any other problem, fix the deficiencies. [The notice] doesn't mean that they are required to get out. That would be self help. A landlord would still be required to get judicial process.
>
> So, the fact that the landlord served a ten-day notice over deficiencies because [defendants] didn't maintain the property may or may not [have been] correct, but there was no evidence to disprove the ten-day notice. Instead the Court ruled that there was a five-day notice, and that the tenants relied on that five-day notice and vacated [the property], despite the Court having just acknowledged that the whole purpose of a five-day notice is exactly what it is. It's pay or you're subject to process."

¶ 28 The court ruled that no pleading was necessary for it to order return of the security deposit:

> "At the end of the lease, the tenants are entitled to the return of their security deposit. The *** Neimans filed the instant lawsuit to retain the security deposit for further damages. The Neimans lost, so the security deposit gets returned to the tenants.
>
> The Neimans are attempting to shift the burden of proof to the tenants. The burden of proof is on the landlord as to why they should keep the security deposit for additional damages, and the landlord and the Neimans lost, so the security deposit gets returned."

It suggested that the time for trial had been reasonable for the subject matter:

> "What I did do was I set a time limit of four [*sic*] hours, and we went through 27 exhibits on a small claims case for basically return of a security deposit and some damages to a kitchen sink, and I'm not going to turn that kind of a case, for judicial economy, into a five-day trial."

It expressed surprise that plaintiffs would claim to have been prejudiced by comments that were, if anything, critical of Arnold. The court denied the motion to reconsider, and plaintiffs timely appealed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, plaintiffs ask us to reverse the judgment for defendants and "recalculat[e] the damages to a minimum of $5,250 plus attorney's fees, costs and expenses," or order a new trial. They make three claims of error in support of reversal or partial reversal and three more in support of a new trial.

In favor of reversal or partial reversal:

(1) The court made three distinct errors that assigned too much responsibility or too much liability to plaintiffs for the sink clog.

(2) Because the court did not find a constructive eviction or that the premises were uninhabitable, the court had to find that defendants vacated the premises without cause, which further necessitated that the court find that plaintiffs suffered damages.

(3) Because defendants never asked the court to order the return of the security deposit, the court erred in entering such an order.

In favor of a new trial:

(A) The court abused its discretion by limiting the trial time to 1:45 p.m. to 4:45 p.m. and not providing compensatory time for interruptions.

(B) The "court abused his discretion by making inappropriate remarks about 'breastfeeding' which tainted the trial and were prejudicial."

(C) The trial court abused its discretion when it refused to admit a "receipt from 'Anthony's Plumbing," which plaintiffs contend would have shown "pipe damage Defendants caused that was discovered after they moved out of the property."

¶ 31 We hold that all these arguments but one lack merit. The exception is their claim that the court should not have ordered them to return the security deposit. That claim is analytically unrelated to the remaining claims. We thus address it before turning to the two remaining arguments for reversal and the three arguments for a new trial.

¶ 32 The trial court exceeded its subject-matter jurisdiction when it ordered plaintiffs to return the security deposit. "Subject-matter jurisdiction" is a court's power to hear and determine a specific controversy. *Ligon v. Williams*, 264 Ill. App. 3d 701, 707 (1994). Whether the trial

court had subject-matter jurisdiction to enter an order is an issue of law, so our review is *de novo*. See, *e.g.*, *Brandon v. Bonell*, 368 Ill. App. 3d 492, 503 (2006). A party invokes the court's subject-matter jurisdiction by filing an initial pleading, and the "pleadings of the parties frame the issues in controversy and circumscribe the relief that the court is empowered to order." *City of Chicago v. Chicago Board of Education*, 277 Ill. App. 3d 250, 261 (1995). The court cannot *sua sponte* grant affirmative relief to a party that has never sought it; if it does so, it exceeds its subject-matter jurisdiction. *City of Chicago*, 277 Ill. App. 3d at 261. The trial court here explained that it was simply deciding plaintiffs' claim: "[Plaintiffs] filed the instant lawsuit to retain the security deposit for further damages. [Plaintiffs] lost, so the security deposit gets returned to the tenants." But plaintiffs' complaint was simply for damages. To be sure, in the absence of damages, plaintiffs had no right to retain the deposit. However, in the absence of pleading seeking an order to return the deposit—indeed, lacking even an oral request for such relief—the court should not have actually ordered the return. We therefore vacate the order as void for want of jurisdiction.

¶ 33 In their two remaining arguments for reversal, plaintiffs ask us to "recalculat[e] the damages." This request betrays a misconception that pervades their brief. They argue as though the court's findings were favorable to them on all or most essential matters until it came to the calculation of damages. At that point, it appears, they think that the court went wrong by subtracting too much based on partial defenses so that it incorrectly arrived at a negative damages amount. They misunderstand either the court's holding or what they had to prove under their cause of action, or both. The result is a series of arguments that never quite address central issues. Thus, for the most part, we are addressing plaintiffs' arguments, not reviewing the trial court's decisions. However, to the extent that we consider the trial court's decisions of fact, our

review is under the manifest-weight-of-the-evidence standard. See, *e.g.*, *Dore v. Quezada*, 2017 IL App (1st) 162142, ¶ 21.

¶ 34 The only way that plaintiffs could establish their entitlement to an *outright* reversal is to establish not only that the judgment for defendants was error but also that the judgment should have been for them on their claim, which was for breach of contract. To establish a claim for breach of contract, a plaintiff must prove four elements: " '(1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of contract by the defendant; and (4) resultant injury to the plaintiff.' " *Burkhart v. Wolf Motors of Naperville, Inc.*, 2016 IL App (2d) 151053, ¶ 14 (quoting *Henderson-Smith & Associates, Inc. v. Nahamani Family Service Center, Inc.*, 323 Ill. App. 3d 15, 27 (2001)). Put the other way around, a plaintiff's claim for breach of contract fails entirely if he or she fails to prove any one of the four elements. Thus, when a judgment is for the defendant, one does not know on how many elements there was a favorable finding for the plaintiff unless that is explicitly stated. Moreover, there does not *necessarily* have to be a finding on every element; one negative finding is enough. The judgment here is open to interpretation on essentially every point except its calculations. Of course, in an appeal, a plaintiff is free to argue that the evidence required a finding on an element regardless of what the trial court said. Plaintiffs here either had to do that for each element or else show that, despite the uncertainties in the court's findings, the favorable findings were already there. Plaintiffs' arguments are not structured to do this, which goes much of the way to explaining why they must fail, but we address them individually nonetheless.

¶ 35 Plaintiff's first argument for reversal is that the court made three specific mistakes in assigning responsibility for fixing the sink. Those are—in our ordering—as follows:

(1) The repairs clause and the limitation-of-liability clause placed the responsibility for repairs to plumbing on defendants, regardless of the reason repairs were needed.

(2) Because, when all the evidence is taken into account, "no one can say conclusively who clogged the sink," the trial court "should have found the tenants were at least partly at fault."

(3) Even assuming that the lessor was responsible for plumbing repairs, the "doctrine of mitigation of damages" applied to defendants and required them to call a plumber as soon as plaintiffs made clear that they would not be fixing the sink.

¶ 36 First, the lease placed the responsibility for repairs to plumbing on the lessees only "whenever damage or injury *** shall have resulted from misuse or neglect." The limitation of liability did not change this. Limitation of liability is a generally understood legal concept; a disclaimer of liability such as the one in the lease is a statement that one is not responsible for harm caused by the relevant property—here, pipes. It has nothing to do with the responsibility to repair.

¶ 37 Next, we note that a plaintiff has the burden of proving that it performed under the contract. Therefore, if "no one can say conclusively who clogged the sink," plaintiffs cannot say that they proved that the landlord made the repairs the lease required of it. Last, whether defendants acted reasonably when they waited until July 19, 2013, to get the sink fixed is essentially an issue of fact. Kenneth's e-mail of July 17, 2013, which forbade defendants from hiring Capps Plumbing, asserted that the lease gave the lessor the right to veto the lessees' choice of tradespeople, and apparently to review and veto the estimate. However, Kenneth's telling defendants that Capps was unacceptable implies that defendants asked Kenneth to approve Capps, which in turn strongly suggests that Kenneth had already stated that he expected them to

seek such approval. Certainly, the court would not have erred in drawing that inference. Thus, the court did not err in concluding that Kenneth's actions caused the delay.

¶ 38 Plaintiffs next argue that, because defendants "vacat[ed] the premises without cause," plaintiffs necessarily incurred damages. The facts defeat this argument. By ordering defendants out, plaintiffs created a high barrier to proving that defendants acted without cause; plaintiffs did not surmount that barrier. On July 22, 2013, Kenneth sent defendants a notice stating unambiguously that Mercantile had terminated the lease and that defendants should therefore leave the house by August 1, 2013. Plaintiffs had left as of August 12, 2013. Moreover, the July 22, 2013, notice—the "10-day notice"—came just after Kenneth placed a for-rent sign in front of the house. Defendants thus did as Kenneth told them—with a 12-day delay, to be sure. But, considering that defendants had a young child and two dogs, the move must have been a challenge. Indeed, Lane testified that the family moved in temporarily with Arnold's mother, suggesting that defendants did not have time to secure another lease. We do not accept that they did this "without cause" when Kenneth demanded that they do it.

¶ 39 Kenneth argued in the trial court that the 10-day notice and the similar notice of August 2, 2013, were not really an attempt to terminate the lease. That interpretation is untenable. At the hearing on the motion to reconsider, he contended that the notices were merely a step toward making defendants "subject to process"—that is, subject to eviction through a forcible entry and detainer suit. He further seemed to say that he considered the notices the proper way to make defendants cure "the deficiencies," specifically, to fix the sink themselves. But defendants fixed the sink and left without being evicted, so whatever Kenneth thought he was doing, the trial court had to look at the notices as relating to the status of the contract. Kenneth's mere subjective intent was immaterial. See *Village of South Elgin v. Waste Management of Illinois, Inc.*, 348 Ill.

App. 3d 929, 941 (2004) ("intent," in the context of contract formation, "refers to objective manifestations of intent in the words of the contract and the actions of the parties; it does not encompass one party's secret, undisclosed intentions or purely subjective understandings of which the other party is unaware"). Of course, defendants had consulted a lawyer, so they likely had a general idea of eviction procedure. That is no help to plaintiffs, though, as that consultation means that defendants not only saw that Kenneth had claimed to have terminated the lease, but understood that Kenneth was unequivocally threatening to evict them. Moreover, whatever they understood about their defenses to eviction, nothing in what Kenneth wrote or did at the time would have informed defendants that all he really was trying to do was to get them to pay to fix the sink.

¶ 40 We now turn to plaintiffs' claims about the conduct of the trial, starting with plaintiffs' argument that the court allowed far too little time for the trial and that that time was eaten into by interruptions. They list seven ways in which they suffered prejudice:

(1) They did not have time to recall Arnold for testimony not specified.

(2) They did not have a chance to "prove Defendants had no intention of paying rent as early as mid-July."

(3) They lost the opportunity to provide more evidence that defendants were at least partly responsible for causing the clog in the sink.

(4) They did not get to ask why defendants did not immediately notify Kenneth that they had had the sink fixed on July 19, 2013.

(5) They did not have time to "impeach Defendants [on matters] including their statements about 'never [having] an issue about a prior landlord ever.['] "

(6) They did not have the opportunity to subpoena AA Anthony's Plumbing or the Roto-Rooter technician.

(7) "Most disturbingly," they did not get to ask for proof that defendants had placed rent money in a separate account.

The court's conduct of a trial is a matter for its discretion. See *Sekerez v. Rush University Medical Center*, 2011 IL App (1st) 090889, ¶ 73. Where a matter is within the trial court's discretion, we do not reverse absent an abuse of that discretion. *Grinyov v. 303 Taxi, L.L.C.*, 2017 IL App (1st) 160193, ¶ 24. No abuse occurred in the court's setting of limits. As the court noted, this was a simple landlord-tenant dispute. Moreover, plaintiffs' list shows why it was necessary for the court to keep to the limits. Item (1) suggests that plaintiffs wished to recall Arnold for no specific reason. Items (2), (4), (5), and (7) are of no clear relevance. Plaintiffs clearly wanted to prove that defendants had some sort of bad intent. We noted above that Kenneth's subjective intent in sending the 10-day notice was not relevant; the same reasoning applies here. We thus fail to see how any of this evidence would have helped plaintiffs. Items (3) and (6) relate to the main dispute of fact at trial: what caused the clog in the sink. Given that the parties disagree even about whom the lease made responsible for clogs not caused by the lessees' misuse or neglect, we are not persuaded that this issue was as important as the parties make it out to be. In any event, (6) is a discovery issue and plaintiffs do not address discovery rules, and (3) is, like (1), so nonspecific that it suggests that plaintiffs would have wasted any further time.

¶ 41 Plaintiff's penultimate argument is that the judge's questions and comments to Arnold about breastfeeding her infant were "so inflammatory [that they] created bias for both sides." Plaintiffs' theory is, in essence, that because the judge was rude to Arnold about a sensitive

subject, he was motivated to give defendants a decision that would make them happy and so less inclined to contact the media or lodge a complaint. They assert that the judge should have recused himself after the comments. We review a trial judge's decision on whether recusal was necessary for an abuse discretion. *Barth v. State Farm Fire & Casualty Co.*, 228 Ill. 2d 163, 175 (2008). Moreover, "[a] new trial will be granted on the basis of a judge's remarks or conduct only if the remarks or conduct result in prejudice to a party." *Sekerez*, 2011 IL App (1st) 090889, ¶ 73. We reject plaintiffs' argument based on the nature of the incident alone; we see nothing in what occurred that could have compromised the court's objectivity in the way plaintiffs suggest. The judge was direct, or even blunt, in asking Arnold about the infant's feeding arrangements. That might have made plaintiffs uncomfortable. Arnold, however, was equally direct in stating her belief that the court should allow her to breastfeed while she testified. We see no basis to suspect that the judge would have thought that Arnold or Lane was offended. We acknowledge the inadvisability of the judge's comment that he could not understand why anyone would bring a seven-week-old infant to an all-afternoon trial. Particularly given that Arnold had already explained that the infant did not bottle-feed, this was less-than-ideally sensitive to the needs of Arnold and her infant. But the comment was ill-considered at worst, not inflammatory. The judge had no reason to fear becoming the subject of a judicial inquiry or a media firestorm.

¶ 42 Finally, plaintiffs assert that they are entitled to a new trial because the court improperly excluded a receipt from AA Anthony's Plumbing that they assert would show that defendants damaged the pipes. We reject the argument because plaintiffs are unable to show prejudice. A party is entitled to a new trial based on an erroneous exclusion of evidence only if the lack of that evidence caused substantial prejudice to that party. See, *e.g.*, *DiCosolo v. Janssen*

Pharmaceuticals, Inc., 2011 IL App (1st) 093562, ¶ 40. The party seeking the new trial has the burden on appeal of establishing prejudice. *DiCosolo,* 2011 IL App (1st) 093562, ¶ 40. For a reviewing court to find prejudice, it must have an indication of what the excluded evidence would have been; that indication may come through a formal offer of proof, but that is not an absolute requirement. *Carlson v. City Construction Co.*, 239 Ill. App. 3d 211, 238 (1992). Here, we do not know enough about the receipt. It is not a part of the record—not even as an exhibit to the motion to reconsider. And the colloquy at trial did not elicit sufficient information either. We know that it was a "two-page document," that it referred to a charge for $749, and that Kenneth described it as an invoice for plumbing work done at the house after defendants vacated it. That is not enough to suggest that it would tend to show that defendants damaged the pipes. Indeed, we are not sure how it could show that. Based on plaintiffs' frequent mentions of defendants' use of Drano, it seems likely that plaintiffs had a plumber's opinion that the pipes had been damaged by a caustic drain opener. However, defendants were in the house for only four months, so we would require some persuasion to believe that the damage could clearly be attributed to them.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the judgment in favor of defendants except as to the order that plaintiffs return the security deposit, which we vacate.

¶ 45 Affirmed in part and vacated in part.