2013 IL App (3d) 120132-U

Order filed November 14, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

WILLOW BROOK ESTATES COMMUNITY ASSOCIATION,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0132
v.	)	Circuit No. 11-LM-3690
	)	
JOSEPH MCCREE III,	)	Honorable Thomas Carney
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The record does not support defendant's contention that the trial court erred by entering a judgment in favor of plaintiff.

¶ 2 Plaintiff, Willow Brook Estates Community Association, filed a forcible entry and detainer action against defendant, Joseph McCree III, alleging defendant owed "assessments and charges." After a trial, the court entered a $1189 judgment for plaintiff, including attorney fees and court costs, and awarded it possession of 24611 South Willowbrook Trail in Crete, Illinois

(the residence). Defendant appeals, contending the court's judgment was against the manifest weight of the evidence and the court lacked jurisdiction over the cause. We affirm.

¶ 3 FACTS

¶ 4 On December 7, 2011, plaintiff filed a complaint in forcible entry and detainer against defendant, alleging defendant owed "assessments and charges" of $1,087.43. Plaintiff requested this amount, plus court costs and attorney fees.

¶ 5 The record indicates a Will County police officer unsuccessfully attempted to serve defendant and "unknown occupants" each with a summons and complaint at the residence on six occasions between December 8 and 15, 2011. The officer noted that "either [defendant was] not home or more likely will not answer the door for the police. Left several yellow cards, no call back." (Emphasis in original.)

¶ 6 The docket sheet contained in the common law record indicates on January 11, 2012, defendant was present *pro se* and "submit[ted] to the jurisdiction of the Court." The cause proceeded to trial on January 26, 2012. The docket entry for that day reveals the court heard evidence and witness testimony. The court entered a judgment for plaintiff in the amount of $1189, including $350 in attorney fees and $235 in court costs, and also ordered plaintiff to receive possession of the residence on March 29, 2012.

¶ 7 Defendant appeals.

¶ 8 ANALYSIS

¶ 9 Defendant does not challenge the pleadings or raise an issue with respect to possession based on the complaint. Instead, defendant contends the trial court's decision was against the manifest weight of the evidence. In support of this assertion, defendant asserts the fines "for

[the] exterior maintenance of his residence" were not "warranted" and the attorney fees charged to his homeowners association account were "frivolous." Plaintiff responds defendant has not provided this court with a sufficient record to review his claims of error based on the evidence.

¶ 10 We agree the record is sparse. Nonetheless, using an abundance of caution, we have undertaken the task of comparing the relief requested by plaintiff in the complaint to the ultimate ruling of the court. Our careful review of the complaint reveals plaintiff did not cite to any statutory authority supporting its request for defendant to pay plaintiff's attorney fees and court costs as a consequence of unpaid association charges and assessments.

¶ 11 In addition, plaintiff did not attach any written agreement between the parties providing for the payment of assessments, charges, attorney fees, or costs. See 735 ILCS 5/2-606 (West 2010) (if a claim is based on a written instrument, a copy of the written instrument must be attached to the pleading). It is well-established that absent a written agreement, or statutory authority, each party must pay their own attorney fees and costs. *Morris B. Chapman and Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 572, 739 N.E.2d 1263, 251 Ill. Dec. 141 (2000).

¶ 12 The complaint in this case leaves us guessing as to whether the trial court's order for defendant to surrender possession of the residence in addition to paying plaintiff's attorney fees and court costs is based on contract, statute, or both. In addition, plaintiff's brief on appeal provides no guidance on this matter, but states defendant is the owner of the property. Consequently, we must speculate that the trial court's authority to grant such relief is based, in part, on statute. See 735 ILCS 5/9-102(a)(8) (West 2010). Had the initial complaint been more detailed, or included a copy of the agreement between the parties, if any, our speculation and concerns would be unnecessary.

¶ 13 However, the case law places the burden on appellant to provide a sufficient record for a reviewing court to consider his contentions of error. *Midstate Siding and Window Co. v. Rogers*, 204 Ill. 2d 314, 319, 789 N.E.2d 1248, 273 Ill. Dec. 816 (2003). If a record is not available, an appellant may file a bystanders' report or an agreed statement of facts. See Ill. S. Ct. Rule 323(c); (d) (eff. Dec. 13, 2005) (appellant may prepare a bystanders' report if no verbatim transcript of the proceedings is available).

¶ 14 Here, the contentions of error are factual. The record includes four photographs of the property and a copy of a ledger of defendant's association account showing defendant had an outstanding balance of $592.34 as of June 13, 2011, which included unpaid attorney fees prior to litigation. Any doubt arising from an incomplete record must be resolved against the appellant. *Midstate Siding and Window*, 204 Ill. 2d 314, 319. Thus, in the absence of a complete record, we will assume the trial court's finding had a sufficient basis in fact and law. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958, 76 Ill. Dec. 823 (1984). Consequently, we must conclude the trial court's findings of fact were not against the manifest weight of the evidence and the court's judgment was proper.

¶ 15 Defendant also contends the court lacked jurisdiction over this matter because he "submitted to the jurisdiction of the court, but unknown occupants did not." Defendant thus believes the trial court's judgment is void.

¶ 16 A court must have subject matter jurisdiction and personal jurisdiction to enter a valid judgment in a case. *Lebanon Trust and Savings Bank v. Ray*, 10 Ill. App. 3d 345, 348, 293 N.E.2d 623 (1973). A court acquires personal jurisdiction over a party by virtue of a summons or through a voluntary appearance. *GMB Financial Group, Inc. v. Marzano*, 385 Ill. App. 3d

978, 984, 899 N.E.2d 298, 326 Ill. Dec. 81 (2008).

¶ 17 In this case, the record shows defendant voluntarily "submit[ted] to the jurisdiction of the Court" at a hearing on January 11, 2012. Thus, it is irrelevant that "unknown occupants" were not served, as the court had proper jurisdiction over the subject matter and defendant. Therefore, the court entered a valid judgment against defendant. Consequently, defendant's contention the trial court lacked jurisdiction to enter the judgment in this case is without merit.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, we affirm the judgment of the Will County circuit court.

¶ 20 Affirmed.