

No. 1-12-0543

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

VIRGINIA HACKETT, as Trustee of the Rosalie Loiacono)	Appeal from the
trust established in the Joseph Rizzo revocable trust dated)	Circuit Court of
July 30, 1982,)	Cook County
)	
Plaintiff-Appellee,)	No. 11 M1 729096
)	
v.)	Honorable
)	Orville F. Hambright, Jr.
MICHAEL HOBAN a/k/a MIKE HOBAN,)	Anthony J. Burrell,
)	Judges Presiding.
Defendant-Appellant.)	

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court had personal jurisdiction and subject matter jurisdiction in forcible entry and detainer action, and did not abuse its discretion in denying defendant's motion to vacate default judgment. Defendant failed to show that trial court's order resulted in a denial of substantial justice.

¶ 2 Plaintiff, Virginia Hackett, as Trustee of the Rosalie Loiacono trust established in the Joseph Rizzo revocable trust dated July 30, 1982, filed a complaint under the Forcible Entry and Detainer Act (735 ILCS 5/9-102 (West 2010)) (the Act) against defendant, Michael Hoban a/k/a

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Mike Hoban. The trial court entered a judgment granting possession against defendant.

Defendant subsequently filed a special and limited appearance seeking to vacate the judgment pursuant to section 2-1203 of the Code of Civil Procedure. 735 ILCS 5/2-1203 (West 2010). The court denied defendant's motion to vacate and defendant timely filed this appeal. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4 On December 7, 2011, plaintiff filed a complaint under the Forcible Entry and Detainer Act (735 ILCS 5/9-102 (West 2010)) against defendant for possession of the premises located at 3006 North Lotus Avenue in Chicago, Illinois. Summons was issued and placed with the sheriff of Cook County on December 11, 2011. The summons was to be served on defendant at 1400 North Elmhurst Road in Mt. Prospect, Illinois. The summons provided that the sheriff was to return with the endorsement of service seven days before the appearance date of December 21, 2011.

¶ 5 On December 21, 2011, the trial court held a status call. On that date, plaintiff filed an “ex-parte motion for appointment of special process server” noting that the sheriff had unsuccessfully attempted service on December 14, 2011. On December 21, 2011, the court ordered (1) an alias summons to issue, and (2) appointed Brad Douglass as special process server. The alias summons had a return date of January 9, 2012, and was to be served on defendant at “Unit 415” at 1400 North Elmhurst Road in Mt. Prospect, Illinois. The trial court continued the matter until January 9, 2012.

¶ 6 On December 22, 2011, the sheriff filed the original summons without effectuating

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service and noted the reason was “no contact” and also noted that service was attempted on December 14, 2011 but a male answered the doorbell “#29” and stated “he doesn't know who defendant is.” On January 4, 2012, the sheriff filed the alias summons showing attempts at service on December 24, 2011 and December 28, 2011 and noted “not served - no contact.”

¶ 7 At the status hearing on January 9, 2012, plaintiff filed an affidavit of special process server Bradley R. Douglass, executed on January 6, 2012, which showed service of summons and complaint upon defendant on December 28, 2011 at 2:42 pm at 1451 SW Fork Drive in Lake Forest, Illinois. The court reviewed the affidavit and ordered plaintiff to “present an affidavit for posting” regarding the pre-suit demand for immediate possession. Contrary to defendant's statement of facts, neither the order, nor the half-sheet, states that plaintiff was ordered “to file an affidavit *for service* by posting.” (Emphasis added.) The matter was continued until January 12, 2012.

¶ 8 On January 12, 2012, the court reviewed plaintiff's affidavit regarding the pre-suit demand for immediate possession. In her affidavit, which appears to have a typographical error as it is dated January 10, 2011, plaintiff states that, on December 2, 2011, she “posted a copy of a Demand for Immediate Possession on the door at 3006 North Lotus, Chicago, Illinois.” She further states that, at that time, defendant “was not present or residing” at that address. Plaintiff additionally stated: “I believe Michael Hoban is residing in either Mount Prospect, Illinois or Lake Forest, Illinois.” (As noted earlier, defendant had been served with process in Lake Forest). After reviewing plaintiff's affidavit, the trial court entered a judgment for possession against defendant.

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¶ 9 On February 1, 2012, defendant filed a special and limited appearance and a motion seeking to vacate the judgment. Defendant asserted that he was, at all relevant times, in actual possession of the premises located at 3006 N. Lotus Avenue. In support of his motion to vacate, defendant attached an affidavit stating he was present at the premises between 5:00 pm on December 1, 2011 and 2:00 or 2:30 “.m” [*sic*] on December 2, 2011 (the affidavit does not state whether defendant left the premises at 2:00 or 2:30 a.m. or 2:00 or 2:30 p.m.) and that no person rang the doorbell or knocked on the door. Defendant further stated in his affidavit that he did not see plaintiff that day post any document on the door of the premises, but he does not deny seeing the posted notice. Defendant also asserted in his motion that plaintiff, as a party to the action, was not authorized to serve any notices. Defendant's motion also contains the bare assertion that plaintiff's affidavit submitted to the court on January 12, 2012, lacked compliance with section 5/9-107 of the Act. Additionally, the motion asserts that plaintiff failed to show “she made a diligent inquiry to locate the parties in possession of the premises, namely, Michael Hoban.” Defendant further asserted that “the file” lacked evidence that he was served by the sheriff but he failed to address the fact that service was effectuated by the special process server, or the fact that service was effectuated at the address where plaintiff believed defendant resided, not at 3006 N. Lotus Avenue. Finally, defendant argued in his motion that, pursuant to section 5/9-104 of the Act, the trial court lacked jurisdiction to enter the order of January 12, 2012.

¶ 10

ANALYSIS

¶ 11 On appeal, defendant raises three issues which plaintiff correctly notes are overlapping. However, defendant's arguments can be summarized as follows: (1) the trial court's default

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judgment is void where the court lacked personal jurisdiction over him as evidenced by the papers filed in this case which fail to disclose either service of summons or defendant's voluntary appearance; (2) the trial court abused its discretion in denying his posttrial motion where it lacked subject matter jurisdiction because plaintiff failed to comply with section 9–211 of the Act regarding the posting of the demand for possession where defendant was in actual possession of the premises; and (3) the trial court's order denying defendant's motion to vacate the default judgment should be reversed where defendant was denied substantial justice because there was no trial on the merits.

¶ 12 Standard of Review

¶ 13 Section 2–1203 of the Code of Civil Procedure provides:

“[A]ny party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief.” 735 ILCS 5/2–1203(a) (West 2010).

This court will not disturb the trial court's denial of that motion unless there has been a denial of substantial justice or the trial court abused its discretion. *Wells Fargo Bank, N.A. v. McCluskey*, 2012 IL App (2d) 110961.

¶ 14 Trial Court Had Personal Jurisdiction Over Defendant

¶ 15 Defendant argues that the court's default judgment is void where the court lacked personal jurisdiction over him as evidenced by the papers filed in this case which fail to disclose either service of summons or defendant's voluntary appearance. We disagree.

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¶ 16 In his opening brief, defendant focuses solely on the fact that he was not served by the sheriff and failed to address the fact that service was effectuated by a special process server. After plaintiff pointed this out in her response brief, defendant did not deny that he was served by special process server, Bradley R. Douglass. Instead, defendant's reply brief contains several arguments, purportedly challenging the appropriateness of that service, that were never presented to the trial court. Defendant also challenges plaintiff's filing of the supplemental record containing the affidavit of the special process server, but fails to state any reason as to why leave to file the supplemental record was not properly granted by this court. Regardless, defendant's arguments, most of which contain either no citation to authority, or citation to distinguishable cases, are meritless. Thus, the trial court's default judgment order was not void for lack of personal jurisdiction over defendant.

¶ 17 Trial Court Had Subject Matter Jurisdiction

¶ 18 Defendant also contests the trial court's subject-matter jurisdiction. “Forcible entry actions are summary, statutory proceedings, and [a] court hearing a forcible entry and detainer claim is considered a court of special and limited jurisdiction.” (Internal quotation marks omitted.) *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1038 (2009). “In Illinois, the Forcible Entry and Detainer Act *** provides the sole means for settling a dispute over the possession of real property.” *Russell v. Howe*, 293 Ill. App. 3d 293, 297 (1997). A forcible entry and detainer action is in derogation of the common law, and the party bringing such an action must comply with the requirements of the Act, especially those requirements relating to jurisdiction. *Nance v. Bell*, 210 Ill. App. 3d 97, 99-100 (1991). If the party bringing

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the action fails to comply with the Act's jurisdictional requirements, the trial court lacks jurisdiction over the dispute and is powerless to award possession. *Russell v. Howe*, 293 Ill. App. 3d at 297. “However, the statute should be construed liberally.” *Nance v. Bell*, 210 Ill. App. 3d at 100.

¶ 19 Defendant argues that “[t]he affidavit filed by plaintiff to obtain subject matter jurisdiction under the [Act] discloses that the Act was not strictly followed. He contends that he was in actual possession of the premises and plaintiff's posting of a demand for immediate possession was improper. Each party filed an affidavit but a dispute existed as to whether defendant was present or residing at the premises on the date that plaintiff posted her demand for possession on the door. No evidentiary hearing was held and defendant contends the trial abused its discretion in denying his motion.

¶ 20 This court, in discussing the service of a demand for immediate possession has explained:

“Where the statute includes a requirement that written demand is made prior to filing a complaint, the demand must be made in strict compliance with the statute.

[Citations.]

Section 9–211 provides three methods of serving a notice of termination upon a tenant who is in actual possession of the premises. Section 9–211 reads as follows:

'Any demand may be made or notice served by delivering a written or printed, or partly written and printed, copy thereof to the tenant, or by leaving the same with some person of the age of 13 years or upwards, residing on or in

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possession of the premises; or by sending a copy of the notice to the tenant by certified or registered mail, with a returned receipt from the addressee; *and in case no one is in the actual possession of the premises, then by posting the same on the premises.*' [Citation.]

Section 9–211 provides that the notice required in section 9–209 proceedings may be served 'by posting the same on the premises' only 'in case no one is in the actual possession of the premises.' ” (Emphasis added.) *American Management Consultant, LLC v. Carter*, 392 Ill. App. 3d 39, 56 (2009).

The trial court concluded that plaintiff's demand for possession complied with the statute. This was not an abuse of discretion. As plaintiff notes, defendant's affidavit stated he was present at the premises between 5:00 pm on December 1, 2011 and 2:00 or 2:30 “.m” [*sic*] on December 2, 2011. Thus, the affidavit does not state whether defendant left the premises at 2:00 or 2:30 a.m., or 2:00 or 2:30 p.m., and it is unclear as to when he was absent from the premises on December 2, 2012 when plaintiff posted the notice. As noted earlier, defendant does not deny that he saw the notice. Moreover, in her affidavit, plaintiff stated that she believed defendant was residing in either Mount Prospect, Illinois or Lake Forest, Illinois. It is undisputed that defendant was successfully served in Lake Forest.

¶ 21 We further note, however, that it is not certain that demand was even required in the instant case. As this court has explained: “Section 9-104 does not impose a demand or notice requirement that is not otherwise specifically provided for by the particular subpart or subsection of 9-102.” *North American Old Roman Catholic Church by Rematt v. Bernadette*, 253 Ill. App.

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3d 278, 291 (1992). Although subpart (a) of section 9-102 contains eight subsections, only four specifically require that demand or notices be given. *Id.* None of these four subparts appear relevant. The complaint here does not indicate under which subsection of 9-102 it was brought, and plaintiff merely alleged that defendant had no legal interest in the property and had refused to turn over the keys. This allegation, however, appears to implicate subsection 9-102(a)(2), *i.e.*, which concerns the situation where the defendant made a peaceable entry but the possession was then unlawfully withheld. Yet, the Illinois Supreme Court has specifically found that a demand in writing is *not* required by section 9-102(a)(2). See *id.*, citing *Vogel v. Dawdy*, 107 Ill. 2d 68, 76 (1985). We conclude that plaintiff complied with the requirements of the Act by posting a demand for immediate possession. Thus, the court had subject matter jurisdiction over the action.

¶ 22 Trial Court's Order Did Not Result in a Denial of Substantial Justice

¶ 23 Defendant also asserts that, as a result of the default judgment and denial of his timely posttrial motion to vacate, he was denied the right to answer, file a counterclaim, testify or present witnesses. He therefore argues that, as a result, the case was not tried on the merits and substantial justice was denied. We note that in every case of a default judgment there is no trial on the merits. Clearly that is not reason enough to find that substantial justice was denied. However, apart from his arguments that the trial court lacked personal or subject matter jurisdiction - which we have deemed meritless - defendant has failed to present any other reason in support of his contention that substantial justice was denied.

¶ 24 “Before a trial judge can be deemed to have abused his discretion, the record must

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disclose that reasons or facts were presented to the trial judge as a basis for requesting the favorable exercise of the trial judge's discretion.” (Internal quotation marks omitted.) *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 24 (2009). We have scrutinized defendant's motion to vacate the default judgment pursuant to section 2-1203, and his supporting affidavit. Similar to his arguments on appeal, the only bases raised in support of defendant's motion to vacate the default judgment were: (1) the court lacked personal jurisdiction (because he was not served with summons by the sheriff); and (2) the court lacked subject matter jurisdiction (because of a lack of compliance with the requirements of the Forcible Entry and Detainer Act.) We have explained that neither basis has merit. Therefore, we cannot say that the trial court abused its discretion in denying defendant's motion to vacate the default judgment entered against him.

¶ 25

CONCLUSION

¶ 26 For the foregoing reasons, we affirm the circuit court's order denying defendant's motion to vacate the default judgment entered against him.

¶ 27 Affirmed.