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2012 IL App (3d) 11-0890-U

Order filed June 28, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

BRENDA DEMOULIN,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit
	)	Rock Island County, Illinois
Plaintiff-Appellee,	)	
	)	Appeal No. 3-11-0890
v.	)	Circuit No. 04-LM-866
	)	
PRISCILLA DEMOULIN,	)	Honorable
	)	John L. Bell,
Defendant-Appellant.	)	Judge Presiding

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Carter and Holdridge concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court's ruling that defendant was in default of residential lease was not against the manifest weight of the evidence. Trial court's award of attorney fees to plaintiff was proper.

¶ 2 Defendant appeals from the trial court's order granting plaintiff's forcible entry and detainer complaint and awarding plaintiff attorney fees. We affirm.

¶ 3 **FACTS**

¶ 4 On December 29, 2004, plaintiff Brenda Demoulin filed a complaint for forcible entry

and detainer against defendant Priscilla Demoulin alleging defendant violated the lease agreement by failing to pay the 2003 real estate taxes and maintain hazard insurance on the property. Plaintiff requested possession of the property located at 17400 99<sup>th</sup> Avenue West, in Illinois City, damages, and attorney fees. According to the complaint, defendant received a five-day notice to vacate the premises on December 9, 2004.

¶ 5 The one day bench trial commenced on February 2, 2005. Plaintiff testified she was married to defendant's son, Terry Demoulin, and the couple shared a trailer home located at 17400 99<sup>th</sup> Avenue West, in Illinois City, with their two children. Defendant resided in a larger home on the property next door at 17318 99<sup>th</sup> Avenue West. According to plaintiff's testimony, in February 2002, defendant approached plaintiff and Terry about swapping homes. According to plaintiff, the couple paid defendant \$50,000 for the larger home and defendant gifted \$20,000 of the remaining purchase price to the couple as early inheritance.

¶ 6 On March 3, 2002, defendant signed a written lease allowing defendant to reside in the trailer home on the property, now owned by the couple, in exchange for defendant's promise to pay the insurance, real estate taxes, utilities, and necessary repairs. Plaintiff testified that the couple and defendant were each represented by their own counsel during the preparation of the lease terms which included "time is of the essence" language for defendant's financial obligations. Plaintiff stated defendant paid the taxes and insurance directly to the servicing agencies during 2002 and 2003.

¶ 7 The couple divorced on February 11, 2004. Pursuant to the terms of the judgment of dissolution, the couple agreed defendant could reside in the trailer home pursuant to the terms of the original lease and Terry agreed "to execute a quitclaim deed to [plaintiff] for that [trailer

home]" which would be "subject to a life estate in his mother."

¶ 8 After the divorce, plaintiff attempted to refinance the trailer home in September 2004 for the purpose of paying off some outstanding medical bills. As part of the refinancing process, she contacted the insurance company to obtain proof of insurance but learned plaintiff had not paid the insurance for three months and the trailer home was no longer insured. Plaintiff also learned defendant had not paid the real estate tax installments which were due in 2004. Plaintiff sent a letter to defendant on September 14, 2004, notifying defendant of the default for failing to pay the insurance and taxes on the property according to the terms of the original lease agreement. Subsequently, defendant paid the delinquent real estate taxes on September 15, 2004, and sent plaintiff a cashier's check for the insurance payment on September 28, 2004. On September 26, 2004, plaintiff sent a second default notice requiring defendant to sign a new lease which included a rental payment of \$400.00 per month. Defendant did not sign the new lease.

¶ 9 Plaintiff testified that, in the meantime, she attempted to obtain insurance coverage for the property. Since the insurance coverage lapsed, the company re-inspected the property before re-issuing the policy. Upon re-inspection, the insurance company refused to issue a new policy due to the condition of the double-wide trailer. Plaintiff later secured insurance coverage from a different carrier.

¶ 10 Kyle Johnson, an insurance agent with Minter Agency, testified that the couple insured the trailer home beginning in June 1999 until June 2002, when the insurance company cancelled the couple's existing insurance policy on the trailer home and issued a new homeowner's policy to defendant. Two years later, on June 14, 2004, Johnson received a cancellation notice from the insurance company, effective June 24, 2004 for non-payment. On June 24, 2004, defendant

advised Johnson she was not responsible for paying the insurance because she no longer owned the property. However, defendant requested a renter's insurance policy at that time.

¶ 11 After plaintiff contacted Johnson, plaintiff paid the \$403.00 premium and Johnson issued a new hazard insurance policy for the property on September 23, 2004. On October 19, 2004, Johnson learned the insurance company would not agree to insure her property due to the condition of the trailer home located on the land. As a result, Johnson refunded the premium payment to plaintiff.

¶ 12 Terry Demoulin testified that the marital settlement agreement provided for a "lifelong lease" for his mother in the trailer home. As part of the agreed terms for the impending dissolution, Terry's attorney prepared a quitclaim deed. This deed was intended to create a "life estate" for his mother, however, the deed actually created a "lifelong lease." Terry testified he did not understand the difference between a life estate and a lease. Terry stated that, in addition to selling the larger home to the couple at a discounted value, defendant gifted \$20,000 to offset her right to occupy the trailer home until she elected to move from that location.

¶ 13 Defendant testified she wanted to move to the smaller trailer home because it would be easier to maintain and suggested swapping homes. Defendant testified she gave plaintiff and Terry \$20,000 to pay off the amount the couple financed when purchasing the trailer home, and also reduced the purchase price of the larger home. She believed this arrangement would allow her to remain in the trailer home forever.

¶ 14 Defendant testified that plaintiff presented a draft of the March 2002 lease to her and defendant took issue with the word "rent" in the lease, so the parties agreed to remove the word "rent." Defendant agreed her attorney reviewed the lease before she signed the document.

Defendant testified that, since this was originally a "family" situation, she paid the servicing agencies directly for the insurance and taxes, in spite of lease language requiring her to reimburse plaintiff for those expenses. She stated that after the divorce, her relationship with plaintiff became "business."

¶ 15 Defendant testified at trial that she had been taking medications for bipolar disorder and manic-depression for approximately 30 years because she has had difficulty concentrating, understanding, and remembering. Defendant admitted she misplaced, and did not pay, the insurance bill due in June 2004. Defendant testified she intended to pay the real estate taxes in full on November 1, 2004, before the November 16, 2004, installment became due. However, after receiving the notice of default from plaintiff, she immediately paid the real estate taxes on September 15, 2004, and also sent payment to plaintiff for the insurance premium. The bench trial ended on February 2, 2005, with the court taking the matter under advisement.

¶ 16 The trial judge issued a detailed written decision on December 22, 2006, granting plaintiff's complaint for forcible entry and detainer and allowing plaintiff's request for \$1,750 in attorney fees. The court signed a written order on January 31, 2007, requiring defendant to vacate the premises by February 15, 2007.

¶ 17 On February 22, 2007, defendant filed a motion to stay the January 31, 2007, order. On March 2, 2007, the 30<sup>th</sup> day after the court's order of January 31, 2007, defendant filed a motion to reconsider and on March 5, 2007, an amended motion to stay. On April 5, 2007, the parties signed an agreed order staying enforcement of the January 31, 2007 order pending the court's ruling on the March 2, 2007, motion to reconsider.

¶ 18 Plaintiff filed a notice for hearing on defendant's motion to reconsider and scheduled a

settlement conference for May 15, 2007. The parties appeared before the court to discuss settlement, but no agreement was reached and the matter was continued generally. Plaintiff again filed a notice for hearing on the motion to reconsider for May 21, 2008. The parties appeared on this date but the matter was continued again.

¶ 19 There was no activity in the case between May 2008 and November 2011. Five years after the date of trial, the trial court issued a written order on November 4, 2011, which was disseminated to the parties by mail, denying defendant's 2007 motion to reconsider and adhering to its December 22, 2006, written decision. Defendant appeals the November 4, 2011, order denying defendant's March 2, 2007, motion to reconsider the court's written order entered on January 31, 2007.

¶ 20 ANALYSIS

¶ 21 Defendant first argues the trial court erred by granting plaintiff's complaint in forcible entry and detainer because she cured any default as requested by plaintiff's September 14, 2004, notice of default. In addition, defendant argues equity now requires a reversal of the trial court's 2007 order which required defendant to vacate the trailer home by February 15, 2007. Defendant finally contends the trial court incorrectly allowed plaintiff's request for attorney fees.

¶ 22 Plaintiff has not filed a brief in this case. However, our supreme court has held that an appellate court may address the merits of a case on appeal, in the absence of an appellee's brief, if justice so requires and if the record and claimed errors are simple enough so the appellate court can resolve the issues without the aid of an appellee's brief. *First Capitol Mortgage Co. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). This is such a case.

¶ 23 In this case, the parties do not dispute a valid contract existed before the couple's divorce

which included the following provisions:

**"1. TENANT OBLIGATED EXPENSES:** Tenant shall pay to Landlord for the premises, the costs associated with maintaining the property: real estate taxes; hazard insurance; utility charges; and costs of repairs. The time of each and every payment of expenses is of the essence of this Lease.

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**11. INSURANCE:** Landlord will maintain insurance on the property in contents of the premises. The Tenant will be listed as the insured as to the personal property. The premiums chargeable for the insurance coverage secured by the Landlord will be paid by the Tenant.

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**12. DEFAULT:** If Tenant defaults in the payment of any single installment of expenses or in the payment of any other sum to be paid under this Lease, or if Tenant defaults in the performance of any other covenant or agreement, Landlord may at any time without notice declare the term of this Lease ended and re-enter the premises, with or without process of law, and remove Tenant or any other persons occupying the premises without any prejudice to any remedies which might otherwise be used for arrears of rent, and Landlord shall have at all times the right to distrain for expenses due.

**13. ATTORNEYS' FEES AND EXPENSES:** Tenant agrees to pay all reasonable costs, attorneys' fees and expenses that shall be incurred by Landlord in enforcing the covenants and agreements of this Lease, whether or not suit is filed."

¶ 24 Additionally, defendant does not dispute she misplaced the insurance bill and did not pay for insurance, contrary to the terms of the lease agreement. Defendant claims she subsequently reimbursed plaintiff for the cost of insurance and cured her failure to pay the taxes, after receiving the September 14, 2004 notice of default.

¶ 25 Whether a party has committed a breach of contract is a question of fact, which will not be disturbed on review unless the finding is against the manifest weight of the evidence. *Meade v. Kubinski*, 277 Ill. App. 3d 1014, 1024 (1996); *Israel v. National Canada Corp.*, 276 Ill. App. 3d 454, 461 (1995). A trial court's judgment is against the manifest weight of the evidence if the

opposite conclusion is clearly evident. *Ikari v. Mason Properties*, 314 Ill. App. 3d 222, 228 (2000). In a bench trial, the court is in the best position to observe the demeanor of the witnesses, judge their credibility, and determine how much weight to give their testimony. *Prater v. J.C. Penney Life Insurance Co.*, 155 Ill. App. 3d 696, 699 (1987).

¶ 26 With respect to the failure to insure the trailer home, the record reveals defendant did not pay for the homeowner's insurance which was due in June 2004. While *plaintiff* subsequently obtained insurance coverage for the trailer home through a different insurance company, the property was not insured for more than three months due to *defendant's* failure to pay for insurance or to pay the insurance premiums in a timely fashion. This fact alone constitutes a breach of the lease agreement and supports the court's decision in this case. Therefore, we conclude the trial court's finding, that defendant was in default of the lease, was not against the manifest weight of the evidence.

¶ 27 Next, defendant contends that principles of equity require this court to reverse the trial court's ruling requiring defendant to vacate the premises. The crux of defendant's argument is that she suffers from a mental illness which impaired her ability to understand the lease terms. Defendant also claims the lease was "onerous" and enforced "draconian measures" in the event of default.

¶ 28 However, the trial court specifically noted, in its November 4, 2011, order that it heard "nominal evidence" concerning defendant's diminished mental capacity. The trial court further found that any diminished capacity did not affect defendant's "ability or understanding of what occurred in the preparations or signing" of the lease.

¶ 29 The trial court noted defendant's "specific" testimony that the term "rent" was taken out of the written lease agreement at defendant's request. Importantly, we note, defendant was

represented by counsel when the parties drafted the lease. Moreover, defendant testified she reviewed the lease and changed some of the terms before signing it. We conclude the record does not support defendant's contention that plaintiff took advantage of defendant or unfairly surprised defendant with the eviction proceeding. See *Bishop v. We Care Hair Development Corp.*, 316 Ill. App. 3d 1182, 1196 (2000). We agree with the trial court and conclude the lease was enforceable.

¶ 30 Finally, where allowed by contract, attorney fees may be recovered by a successful litigant. *Shipka v. Inserra*, 211 Ill. App. 3d 735, 737 (1991) (citing *Stride v. 120 West Madison Building Corp.* 132 Ill. App. 3d 601, 606 (1985)). Here, the lease provided for an award of attorney's fees incurred by plaintiff (landlord) to enforce the agreement. Consequently, the trial court was correct in awarding attorney fees, in the amount of \$1,750, to plaintiff.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 33 Affirmed.