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SIXTH DIVISION
December 31, 2014

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN AND MARIA TUZIM,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellees,)	Cook County.
)	
v.)	No. 14 M5 000039
)	
ALISA GORDON,)	The Honorable
)	Noreen M. Daly,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶1 **HELD:** *Pro se* defendant failed to establish a violation of her due process rights in the underlying forcible entry and detainer action.

¶2 *Pro se* defendant, Alisa Gordon, appeals the circuit court's *ex parte* order for possession of the property she was leasing, along with \$3,544 in past due rent and court costs in favor of plaintiffs, John and Maria Tuzim. Defendant contends her due process rights were violated where the circuit court (1) failed to provide her with adequate time to answer plaintiffs'

¶7 On February 14, 2014, plaintiffs filed a motion for use and occupancy for the agreed monthly rent of \$900. Also on February 14, 2014, the circuit court entered a trial court order setting a status date for February 20, 2014, and allowing defendant to file a counterclaim, a cross-complaint, an answer or to otherwise plead by the status date and to have an attorney file an appearance by that date.

¶8 On February 20, 2014, defendant filed a motion for substitution of judge for cause, listing Judge Maureen Patricia Feerick as the judge of record. The motion alleged that Judge Feerick "refuse[d] to give defendant enough time requested [*sic*] to answer or otherwise plead and to do a [*sic*] discovery and to answer the plaintiffs['] motion for use [and] occupancy." The circuit court entered an order on February 20, 2014, setting the case for trial on February 24, 2014, and granting plaintiffs' motion for use and occupancy at \$30 per day.

¶9 On February 21, 2014, defendant filed a notice for the filing of a counterclaim, along with the counterclaim. In the counterclaim, defendant alleged plaintiffs unlawfully entered her apartment, breaking the door in the process and leaving the door unrepaired "for months." Defendant additionally alleged plaintiffs were negligent and she suffered "mental stress, anguish, and trauma." Defendant sought \$10,000 in punitive damages. On February 24, 2014, plaintiffs filed two motions *in limine*, requesting that the circuit court bar defendant's counterclaim as untimely, unsupported, and prejudicial and bar or deny defendant's motion for substitution of judge.

¶10 The circuit court entered an order on February 24, 2014, granting defendant's motion for substitution of judge and transferring the case from Judge Ferrick to Judge Russell Hartigan, *instanter*. Also on February 24, 2014, Judge Hartigan entered an order closing discovery "as per

prior order 2-14-14,"¹ and setting the case for trial on March 6, 2014. Judge Hartigan's February 24, 2014, order additionally provided that "defendant's counter claim and plaintiffs['] motion *in limine* [are] entered and continued to be heard immediately prior to trial."

¶11 On March 6, 2014, defendant filed another *pro se* motion for substitution of judge "as of right" citing section 2-1001(a)(2) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1001(a)(2) (West 2012)) as support. On March 6, 2014, an order was entered detailing the proceedings that took place before the circuit court. We quote the order directly:

"This matter coming before the Honorable Judge Daly and being set for jury trial on a Forcible Entry and Detainer, the court finds:

1. That the purported counter-claim of the Defendant was filed improperly, denied by this court pursuant to *Sawyer v. Young*, 198 Ill. App. 3d 1047 *** and *Avenaim v. Lubecke*, [sic] Ill. App. 3d 855 ***, the Defendant having presented neither relevant legal arguments nor any case law to support her position.

2. That Plaintiffs['] motion *in limine* is granted.

3. That at 10:25 Jury selection[] commenced, a brief pre-trial was heard and jury selection[] procedures [were] discussed.

4. That at 11:10 there was a break in proceedings and the Defendant was given an opportunity to decide if she indeed wanted to continue with a jury trial, the Honorable Judge giving her a minute to decide.

5. That at 11:25 the Defendant walked back into court and presented a Substitution of Judge pursuant to 735 ILCS 5/2-1001(a)(2). As Defendant was

¹There was no mention of closing discovery on the referenced February 14, 2014, order.

granted a substitution by Judge Jagielski on 2-24-2014, this motion is denied, *instanter*.

6. That the Honorable Judge Daly requested from the Defendant that she decide if she wants to continue with a jury trial or a bench trial and said Defendant walked out of court at 11:30 stating neither preference to the judge.

7. That the attorney for the Plaintiffs[] moved for a default at 11:31 as this matter was set for trial on 3-6-2014 at 10:00 a.m. and the court granted said motion.

8. That prove-up is scheduled for March 6, 2014 at 1:30 p.m. in room 206.

9. Additional notes of Judge by way of Bystander's Report were taken.

10. Defendant sat in courtroom throughout pre-trial."

On the same date, March 6, 2014, the circuit court entered an *ex parte* order for possession in favor of plaintiffs, finding defendant owed \$3,142 in outstanding rent and \$402 in court costs for a total of \$3,544. Enforcement of the order was stayed until March 20, 2014.

¶12 On March 13, 2014, defendant filed a *pro se* motion to stay the circuit court's March 6, 2014, order pending appeal. Then, on March 17, 2014, plaintiffs filed a motion to show cause, claiming that defendant failed to comply with the court's February 20, 2014, order awarding use and occupancy. Defendant filed her notice of appeal on March 21, 2014, appealing the circuit court's March 6, 2014, order and requesting "relief of \$10,000, a fair jury trial, and due process." On March 24, 2014, the circuit court entered an order striking defendant's motion to stay pending the appeal, noting defendant was not in court, and entering and continuing plaintiffs' motion for use and occupancy pending notification from this court.

¶13 On September 16, 2014, defendant filed before this court a motion for stay pending appeal. The motion was denied on September 17, 2014, and this court authorized and directed the Sheriff of Cook County to enforce the circuit court's possession order. On October 30, 2014, this court granted plaintiffs' emergency motion to compel the Cook County Sheriff to enforce the circuit court's March 6, 2014, possession order against defendant.

¶14 ANALYSIS

¶15 In her *pro se* appeal, defendant contends her due process rights were violated because she was not given adequate time to answer plaintiffs' complaint and to conduct discovery, her counterclaim was improperly dismissed, and her second motion for substitution of judge was improperly denied. Plaintiffs respond that defendant was granted due process and that she failed to present a "germane" defense for her delinquent rent.

¶16 The resolution of defendant's contention involves questions of law, which we review *de novo*. *Lamm v. McRaith*, 2012 IL App (1st) 112123, ¶ 23.

¶17 The Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-101 *et seq.* (West 2012)) is a summary statutory proceeding that "sets forth a mechanism for the peaceful adjudication of possession rights in the trial court." *Circle Management, LLC v. Olivier*, 378 Ill. App. 3d 601, 608 (2007). The purpose of the Act is to determine only who should be in rightful possession of the contested property. *Id.* at 609 (citing *Miller v. Daley*, 131 Ill. App. 3d 959, 961 (1985)). Under the Act, the party asserting his or her right to possession has the burden of proof and must establish his or her right by a preponderance of the evidence. *Id.*; 735 ILCS 5/9-109.5 (West 2012). The defendant "may under a general denial of the allegations of the complaint offer in evidence any matter in defense of the action. *** [n]o matters not germane to the distinctive purpose of the proceeding shall be introduced by joinder, counterclaim or otherwise." 735 ILCS

5/9-106 (West 2012). The trial court must consider the underlying merits of the plaintiff's possession claim, in addition to the basic procedural requirements of trial. *Circle Management, LLC*, 378 Ill. App. 3d at 611. Similar to any civil trial, an eviction trial "should be an orderly procedure wherein the plaintiff presents evidence of possession and compliance with the necessary procedural steps for notice of termination, filing suit and summons." *Eckel v. MacNeal*, 256 Ill. App. 3d 292, 296 (1993). Either party may demand a trial by jury, notwithstanding any waiver of jury trial contained in a lease or contract. 735 ILCS 5/9-107.5 (West 2012). However, "[i]f the defendant does not appear, having been duly summoned as herein provided the trial may proceed ex parte, and may be tried by the court, without a jury." 735 ILCS 5/9-109 (West 2012).

¶18 At the outset, we note that the record does not contain a report of proceedings or an acceptable substitute pursuant to Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). It is the appellant's burden, in this case defendant's, to provide this court with a complete record. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 91-92 (1984). "[I]n absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Id.* at 392. We must resolve all doubts arising from the incompleteness of the record against the appellant. *Id.* Plaintiffs note that defendant failed to include the bystander's notes mentioned in the circuit court's March 6, 2014, order. Defendant's response in her reply brief is that the "Circuit Court was not given these notes to include *** in the record." As stated, however, it was defendant's burden to ensure this court was presented with a complete record. *Id.*

¶19 Keeping these principles in mind, we conclude that, based on the record before us, defendant's due process rights were not violated by the circuit court during the underlying

forcible entry and detainer proceedings. There is no question plaintiffs complied with the five-day notice provision demanding defendant's delinquent rent. See 735 ILCS 5/9-209 (West 2012). Moreover, there is no question defendant was served with summons where she filed her *pro se* appearance on February 13, 2014. Defendant was ordered to file an answer or to otherwise plead. She filed her counterclaim one day late. On the date set for trial, March 6, 2014, defendant was present in court during pretrial proceedings, but, when asked whether she wanted to proceed with a jury trial or to have a bench trial, defendant left the courtroom and did not return. The circuit court entered an order of default and later entered an *ex parte* order for possession and for repayment of outstanding rent and costs in favor of plaintiffs.

¶20 We first turn to the matter of whether defendant was given enough time to answer plaintiffs' complaint and to prepare for the proceedings. Because the record does not contain a transcript from the proceedings nor an acceptable substitute, this court has no method of determining what transpired other than what has been detailed from the circuit court's orders. The circuit court's March 6, 2014, order expressly stated that additional bystander notes were taken. Defendant, however, failed to include those notes for purposes of our review. "[I]n absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 392. What is clear from the record is that defendant was asked to participate in pre trial proceedings and failed to do so and then left the courtroom when the trial was scheduled. "If the defendant does not appear, having been duly summoned as herein provided the trial may proceed *ex parte*, and may be tried by the court, without a jury." 735 ILCS 5/9-109 (West 2012). Based on the record before us, we cannot say defendant's due process rights were violated.

¶21 We turn next to defendant's argument related to her counterclaim. Although the counterclaim was dismissed, contrary to defendant's argument, it was not only dismissed as untimely and for failing to obtain leave of court, but also for failing to present relevant legal arguments or supportive case law. The Act "has previously been held to provide procedural due process by allowing certain germane equitable defenses to be considered." *Pleasure Driveway & Park District v. Kurek*, 27 Ill. App. 3d 60, 67 (1975). We recognize that "[a] tenant is entitled to raise the landlord's breach of the warranty of habitability as a defense in a residential eviction action, because each residential lease implies a warranty of habitability which can be fulfilled by compliance with the local building ordinances." *Rotheimer v. Arana*, 384 Ill. App. 3d 569, 582, (2008). However, in this case, without a report of proceedings or an acceptable substitute, we must presume that the circuit court's order was in conformity with law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. The March 6, 2014, order clearly states that the court considered defendant's counterclaim and "defenses," but that she failed to present evidence or case law to substantiate her defense. Moreover, defendant has failed to present a cogent legal argument with supportive case law on appeal in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). Therefore, based on the record before us, we find no due process violation.

¶22 Finally, turning to defendant's argument regarding her second motion for substitution of judge, we find that the motion was properly denied. We acknowledge that defendant's first motion for substitution of judge filed on February 20, 2014, requested a substitution of judge for cause. We further acknowledge that defendant was granted a motion for substitution of judge as of right on February 24, 2014. Section 2-1001(a)(3) of the Code does allow a substitution of judge for cause if the request is made by petition, the petition sets forth the specific cause for

substitution, and the petition is verified by affidavit. 735 ILCS 5/2-1001(a)(3) (West 2012). However, "[t]o meet the statute's threshold requirements, a petition for substitution must allege grounds that, if true, would justify granting substitution for cause." *In re Estate of Wilson*, 238 Ill. 2d 519, 554 (2010). In this case, defendant failed to meet the threshold requirements where she failed to verify her petition with an affidavit. Moreover, the basis of defendant's motion for substitution of judge for cause was Judge Feerick's refusal to allow defendant "enough time" to plead and complete discovery. The supreme court has advised that "[a] judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality." *Id.* "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." *Id.* Defendant's basis for her motion did not rise to the level of "deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* at 555. As a result, defendant failed to meet the threshold requirements for a motion for substitution of judge for cause.

¶23 Notwithstanding the fact that defendant failed to establish "cause," the circuit court granted defendant a motion for substitution of judge as of right. Pursuant to section 2-1001(a)(2) of the Code, "[e]ach party shall be entitled to one substitution of judge without cause as a matter of right." 735 ILCS 5/2-1001(a)(2) (West 2012). Defendant's one substitution as of right had been fulfilled prior to her March 6, 2014, request. As a result, defendant was no longer entitled to a motion for substitution of judge as of right.

¶24 In sum, we conclude that defendant's due process rights were not violated in the underlying forcible entry and detainer proceedings.

¶25

CONCLUSION

¶26 We affirm the judgment of the circuit court.

¶27 Affirmed.