

No. 1-14-0915

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 MC2 000874
)	
BALDEV BHUTANI,)	Honorable
)	Marguerite A. Quinn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm defendant's conviction for criminal trespass to real property where the evidence showed that he entered a townhouse without lawful authority.

¶ 2 Following a bench trial, defendant Baldev Bhutani was convicted of criminal trespass to real property and sentenced to 18 months of supervision and 50 hours of community service. On appeal, defendant contests the sufficiency of the evidence supporting his conviction, arguing that the evidence failed to show that he entered a residence without lawful authority. We affirm.

¶ 3 Defendant was charged with criminal trespass to real property (720 ILCS 5/21-3(a)(1) (West 2012)), in that on February 21, 2013, he knowingly and without lawful authority entered

1-14-0915

26 Avon Road in Northbrook, Cook County, Illinois. The charge stemmed from a civil eviction of defendant from the subject residence on February 13, 2013, which was the subject of defendant's prior appeal in *Courts of Northbrook Condominium Ass'n v. Bhutani*, 2014 IL App (1st) 130417. In order to address defendant's current appeal from his criminal trespass to real property conviction, we must first provide a procedural history of the events of his eviction as reflected in our previous decision. See *People v. Henderson*, 171 Ill. 2d 124, 134 (1996) ("courts may take judicial notice of matters which are *** readily verifiable from sources of indisputable accuracy").

¶ 4 In 2008, defendant bought a townhouse condominium in Northbrook, Illinois, and stopped paying monthly assessments in 2012. *Bhutani*, 2014 IL App (1st) 130417, ¶¶ 5-6. The Courts of Northbrook Condominium Association (the Association), to which the assessments were due, filed a forcible entry and detainer action against defendant on July 17, 2012, seeking possession of the property and a monetary judgment. *Id.* ¶ 6. Litigation ensued and, following a trial on October 24, 2012, the court entered an order for possession of the subject property and a monetary judgment for the Association. *Id.* ¶¶ 7-10.

¶ 5 On November 21, 2012, defendant filed a *pro se* "motion to reconsider and vacate order of October 24, 2012." *Id.* ¶ 11. Defendant failed to appear in court on December 19, 2012, and the trial court denied defendant's *pro se* motion to reconsider based on the written motion. *Id.* ¶ 12.

¶ 6 On January 7, 2013, defendant filed a *pro se* "motion for leave to file motion to vacate and motion to dismiss," asserting, in part, that he had not been properly served with a summons. *Id.* ¶ 13. On January 18, 2013, the trial court denied defendant leave to file his *pro se* motion, and he filed a notice of appeal from that judgment on January 31, 2013. *Id.*

¶ 7 On February 13, 2013, the sheriff enforced the order of possession and evicted defendant from 26 Avon Road. *Id.* ¶¶ 14, 46. On February 19, 2013, he filed a *pro se* motion for stay of judgment of eviction pending appeal in this court, which we granted on March 5, 2013. *Id.* ¶ 14. On March 11, 2013, we denied the Association's motion requesting clarification as to whether this court ordered the Association either to take no further action against defendant concerning the monetary judgment or to return possession of the townhouse to defendant. *Id.*

¶ 8 On May 13, 2013, before the parties filed their briefs, we issued an order remanding the cause to the trial court for consideration of defendant's November 21, 2012, *pro se* "motion to reconsider and vacate the circuit court's order of October 24, 2012," while retaining jurisdiction of the appeal. *Id.* ¶ 16. We deemed the trial court order of December 19, 2012, denying defendant's motion to reconsider, to be void for lack of proper notice by the Association as defendant never gave the Association permission to notify him of its notice of motion by e-mail. *Id.* We thus found that defendant's motion to reconsider was still properly before the trial court, and that all matters pending before the appellate court were stayed until the trial court ruled on the motion to reconsider. *Id.*

¶ 9 On remand, following a hearing on May 23, 2013, the trial court denied defendant's motion to reconsider, and the appeal proceeded. *Id.* ¶ 19. On March 14, 2014, we affirmed the trial court's judgment, finding, in part, that the Association did not violate the stay by failing to restore possession of the townhouse to defendant as the Association did not evict defendant after the judgment was stayed and the Association had not been ordered to return possession of the townhouse to defendant. *Id.* ¶¶ 46-48.

¶ 10 At issue here is defendant's conviction for criminal trespass to real property stemming from his entry into the townhouse on February 21, 2013, eight days after his eviction therefrom.

1-14-0915

At trial, Karen Balinski testified that she was the regional manager at Lieberman Management Services (Lieberman), the property management company for the Association. The property at 26 Avon Road purchased by defendant was part of the Association. Defendant defaulted on his assessment payments to the Association. He made some payments in response to notices of his default and a demand letter, but was unable to stay current on his assessments. Lieberman moved for eviction, which was granted.

¶ 11 On February 13, 2013, Balinski and five Cook County Sheriff Officers served a copy of the eviction notice on defendant and escorted him out of the townhouse. The officers posted a bright green eviction notice stating "no trespassing" on the door of the townhouse, and the locks were changed. Defendant was not given a new key to the townhouse. The officers gave Balinski an order of possession, which granted the Association possession of the townhouse as of February 13, 2013. After being evicted, defendant removed his car from the garage and left the premises.

¶ 12 On February 18, 2013, Balinski called the police because she believed someone was living in the townhouse as she saw lights being turned on and off. She had also seen defendant's vehicle in the guest parking area and driveway of the townhouse. Defendant had not been granted permission to enter the premises of the townhouse between February 13 and February 21, 2013.

¶ 13 Officer McKenzie testified that he went to the area near 26 Avon Road at about 11 p.m. on February 20, 2013, after receiving a complaint that defendant was still residing in the townhouse after being evicted. McKenzie saw defendant's 2001 Lexus parked at a Citibank parking lot less than a block from the townhouse. Shortly after midnight on February 21, 2013, McKenzie and other police officers went to the front door of the townhouse, on which was

1-14-0915

posted an eviction notice, and knocked and rang the doorbell. No one answered the door and the officers contacted the Association. The Association president then unlocked the door. The officers entered the property and McKenzie saw defendant in the upstairs master bedroom.

¶ 14 Officer Over testified similarly to Officer McKenzie regarding finding defendant in the townhouse.

¶ 15 Defendant testified that he purchased the subject property for \$400,000 in 2008, and fell behind in paying the assessments. He set forth the procedural history in the case, culminating in his filing his notice of appeal on January 31, 2013.

¶ 16 Defendant testified that on February 13, 2013, Balinski and several sheriffs came to his home. One of the sheriffs told defendant that he had a court order for his eviction. The sheriff did not show defendant the court order, did not tell defendant that he could not return to the townhouse, and did not take any of defendant's possessions out of the townhouse. Defendant told the sheriff that the case was still ongoing and that there was a pending motion in the trial court and a notice of appeal had been filed. The sheriff made a phone call and told defendant to discuss the situation with Balinski. Defendant and Balinski conversed and then defendant left the premises. He subsequently filed a motion in this court to stay the eviction. We granted defendant's motion to stay on March 5, 2013, pending appeal. Based on this court's order, he claimed to believe that the matter regarding his eviction remained ongoing.

¶ 17 Defendant further testified that, on approximately February 21, 2013, while his motion to stay eviction was pending, he was inside a second floor bedroom of 26 Avon Road when the police entered the townhouse. After the police found defendant in the upstairs bedroom, he was taken to the police station. He had not seen anything posted on the front door, but acknowledged that his keys did not work and he had to use an unlocked sliding glass door at the back of the

townhouse to enter the building after he was evicted. Defendant admitted he was not allowed on the property before entry of the March 5, 2013 order because the locks had been changed.

¶ 18 Following closing argument, the trial court found defendant guilty of criminal trespass to real property. In so finding, the court stated that defendant knew he was committing a criminal trespass when he unlawfully entered the building and used it as a residence. The trial court specifically pointed out that defendant's knowledge of his criminal trespass was shown when he parked his car in a public lot, could not use his keys in the front door, and entered the townhouse through an open back door. Moreover, a no trespassing sign was posted on the front door, and defendant knew the import of the eviction order when he attempted to vacate it. The court then sentenced defendant to 18 months of supervision and 50 hours of community service. Defendant subsequently filed a motion for a new trial, which the court denied.

¶ 19 On appeal, defendant contests the sufficiency of the evidence sustaining his conviction for criminal trespass to real property. He specifically asserts that the State failed to prove that he entered the townhouse "without lawful authority," as he had a pending motion to reconsider the eviction order in the trial court at the time. He bases this argument on this court's finding that the December 19, 2012, trial court order denying his motion to reconsider was void.

¶ 20 In reviewing a sufficiency of the evidence claim, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the defendant guilty of the essential elements of the crime beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A reviewing court will not retry the defendant. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). Instead, it is the responsibility of the trier of fact to assess witness credibility, weigh the evidence and draw reasonable inferences therefrom, and resolve any conflicts in the testimony. *People v. Sutherland*, 223 Ill. 2d 187, 242

(2006). A defendant's criminal conviction will not be reversed on appeal unless the reviewing court finds that the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

¶ 21 To sustain a conviction for criminal trespass to real property, the State must prove beyond a reasonable doubt that the defendant knowingly and without lawful authority enters or remains within a building. *People v. Thomas*, 374 Ill. App. 3d 319, 325 (2007); 720 ILCS 5/21-3(a)(1) (West 2012). Defendant does not contest the State's proof as to the element of "knowing," or that he entered a building. Instead, he solely challenges the State's proof as to the element of "without lawful authority."

¶ 22 Viewing the evidence in the light most favorable to the State, as we must, we find that the State proved that defendant was "without lawful authority" when he knowingly entered the townhouse at 26 Avon Road on February 20-21, 2013. The record shows that defendant was evicted by sheriffs from the townhouse on February 13, 2013. An eviction notice was affixed to the front door, the locks were changed, and possession of the townhouse was granted to the Association. See *John T. Doyle Trust v. Country Mutual Insurance Co.*, 2014 IL App (2d) 121238, ¶ 15 (stating that eviction is defined as the process of legally dispossessing a person of land or rental property). When, as here, a condominium association uses the forcible entry and detainer statute to evict a unit owner for failure to pay assessments, the unit owner retains title to the condominium. *Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 457-58 (2002). However, the association has the right to possession of the unit until the judgment for possession is vacated once the overdue fees have been paid. *Id.* at 458. Therefore, after defendant was evicted and possession passed to the Association, defendant no longer had lawful authority to enter the premises. We thus find the State proved that defendant was without lawful authority to

1-14-0915

enter the townhouse.

¶ 23 Defendant maintains, however, that, regardless of what the sheriff's department, Balinski, or even defendant himself may have believed on February 21, 2013, his entry into the townhouse was lawful because the trial court's order of December 19, 2012, denying his motion to reconsider, was deemed void by this court in an order issued on May 13, 2013. Defendant thus asserts that, because a void order is a complete nullity from its inception and has no legal effect (*Cushing v. Greyhound Lines, Inc.*, 2012 IL App (1st) 100768, ¶ 103), when he entered the townhouse on February 20-21, 2013, his motion to reconsider was still pending, meaning that the enforcement of the order of eviction was stayed. See *In re Marriage of King*, 208 Ill. 2d 332, 344 (2003) (stating that a timely filed postjudgment motion generally stays enforcement of a judgment)). We disagree.

¶ 24 The trial court had entered an order for possession of the townhouse and a monetary judgment for the Association and against defendant on October 24, 2012. On November 21, 2012, defendant filed his motion to reconsider the trial court's judgment, which was denied on December 19, 2012. Pursuant to Illinois Supreme Court Rule 305(b) (eff. July 1, 2004), defendant could have filed a stay of the possession order pending appeal. A stay pending appeal, if granted, would have preserved the status quo by suspending enforcement of the order of possession. *Bhutani*, 2014 IL App (1st) 130417, ¶ 46. Defendant never filed a motion to stay enforcement of the judgment in the trial court. Instead, he filed a notice of appeal on January 31, 2013, at which point the trial court lost jurisdiction. *People v. Perry*, 2014 IL App (1st) 122584, ¶ 13.

¶ 25 Defendant did file a motion to stay enforcement of eviction in the appellate court, but not until February 19, 2013, after he had already been evicted on February 13, 2013. Not only had

1-14-0915

the eviction already taken place and the Association placed in possession of the townhouse, the mere filing of the motion to stay enforcement of the judgment was insufficient to stay the enforcement of the order of eviction. A motion is nothing more than "an application to the court for a ruling or an order in a pending case." *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 407 (2005). Therefore, as we did not grant the stay until March 5, 2013, the order of eviction was in full force and effect on February 20-21, 2013, when defendant entered the residence.

Accordingly, when defendant entered the townhouse on February 20-21, 2013, he did so without lawful authority.

¶ 26 The fact that on May 13, 2013, this court reversed the trial court's order denying defendant's motion to reconsider the eviction order as void for lack of proper notice does not change our result. At the time defendant entered the property, both posttrial motions had been resolved and there was no stay in effect. The eviction was, therefore, binding on all parties, the Association had possession of the townhouse and defendant had no lawful right to be inside the townhouse, therefore, he was trespassing.

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 28 Affirmed.