

No. 1-15-0297

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

WELLS FARGO BANK, NA., AS)	Appeal from the
TRUSTEE FOR CARRINGTON TRUST)	Circuit Court of
SERIES 2006-NC-3 ASSET BACKED)	Cook County.
PASS-THROUGH CERTIFICATES,)	
)	
Plaintiff-Appellee,)	
)	No. 14 MI 708234
v.)	
)	
UNKNOWN OCCUPANTS,)	
)	
Defendants-Appellants.)	Honorable
)	Mary Minella,
)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not err by holding that posting alone was sufficient notice pursuant to 735 ILCS 5/9-104; (2) the trial court did not err by finding plaintiff's demand notice for forcible entry and detainer complied with the statute; and (3) the trial court did not err by granting plaintiff's motions *in limine*.

¶ 2 This appeal is brought following a jury trial in an eviction action. Defendants, Unknown Occupants, appeal the trial court's decision denying their posttrial motion for dismissal, a new trial or judgment notwithstanding the verdict. They also appeal the trial court's decision to grant plaintiff Wells Fargo Bank N. A.'s (Bank) motions *in limine* prior to trial.

¶ 3 **BACKGROUND**

¶ 4 The Bank acquired the property commonly known as 9821 S. Aberdeen Street, Chicago, Illinois 60643 (property) in a foreclosure action and judicial sale on March 15, 2013. The order approving sale included an order of possession against the mortgagor, Phillip Sanders. However, the order did not permit the Cook County Sheriff to evict any individuals other than Mr. Sanders.

¶ 5 As a result, the Bank filed a complaint in forcible entry and detainer against defendants, Unknown Occupants, on May 8, 2014. Unknown Occupants filed their answer and affirmative defenses on June 6, 2014, and a jury trial was scheduled for October 1, 2014. Prior to trial, the Bank submitted six motions *in limine* and Unknown Occupants filed their responses in opposition. Over Unknown Occupants' objections, the trial court granted half of the Bank's motions on the basis that references to the foreclosure action in the forcible entry and detainer trial for possession were not relevant and could induce sympathy from the jury. As a result, Unknown Occupants were prohibited from (1) introducing evidence concerning the consequences of the underlying action or any subsequent Sherriff's lockout of the Unknown Occupants, (2) introducing any evidence or testimony concerning any claims or defenses raised or not raised by Phillip Sanders or the defendants in the foreclosure action, and (3) introducing testimony or evidence concerning any efforts by the Bank or its agents to evict Phillip Sanders from the property.

¶ 6 Following the trial, the jury found in favor of the Bank, and the court entered an order of possession against the Unknown Occupants. Subsequently, on October 16, 2014, Unknown Occupants filed posttrial motions for dismissal, a new trial or judgment notwithstanding the verdict. The motions were denied on January 5, 2015, and the Unknown Occupants filed their notice of appeal on January 29, 2015.

¶ 7 ANALYSIS

¶ 8 Unknown Occupants raise the following issues on appeal: (1) the trial court erred when it determined that the Bank complied with the statutory requirements for its forcible entry and detainer action; and (2) the trial court erred when it granted the Bank's motions *in limine*. For the reasons that follow, we affirm the judgment of the trial court.

¶ 9 I. Statutory Requirements

¶ 10 A. Standard of Review

¶ 11 Unknown Occupants' contention that the Bank's notice did not meet the statutory requirements presents two discrete questions: first, whether the trial court erred in its interpretation of the statutory requirements, and, second, whether the trial court erred in finding that the Bank's notice satisfied those requirements. *In re Estate of Lower*, 365 Ill. App. 3d 469, 477 (2006).

¶ 12 The first question presents a legal question of statutory interpretation, which we review *de novo*. *Lower*, 365 Ill. App. 3d at 478. The second question, however, presents a challenge to the trial court's finding of fact, which we review under the manifest weight of the evidence standard. See *Corral v. Mervis Industries, Inc.*, 217 Ill.2d 144, 154 (2005) (“[w]e will not disturb a trial court's findings of fact unless those findings are against the manifest weight of the evidence”).

¶ 13 B. Discussion

¶ 14 1. Section 9-102

¶ 15 Unknown Occupants claim section 9-102(a) of the Code of Civil Procedure (735 ILCS 5/9-102(a)) (West 2014) required the Bank to issue a demand for immediate possession of the property in writing. They argue that strict compliance with the statute was required and that the Bank's failure to demand immediate possession stripped the trial court of its jurisdiction to evict. We disagree.

¶ 16 When construing the meaning of a statute, the court's primary objective is to ascertain and give effect to the intent of the drafters, the best indicator being the statute's language. *People v. Galan*, 229 Ill. 2d 484, 529 (2008). The statutory language must be afforded its plain and ordinary meaning. *In re Detention of Lieberman*, 201 Ill. 2d 300, 308 (2002). Where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction. *In re D.S.*, 217 Ill. 2d 306, 313 (2005).

¶ 17 Section 9-102(a) of the Code authorizes a party to maintain an action for forcible entry and detainer under eight circumstances. The Bank brought its action pursuant to the circumstance described in section 9-102(a)(6), which states:

(a) The person entitled to the possession of lands or tenements may be restored thereto under any of the following circumstances:

(6) When lands or tenements have been conveyed by any grantor in possession, or sold under the order or judgment of any court in this State, or by virtue of any sale in any mortgage or deed of trust contained and the grantor in possession or party to such order

or judgment or to such mortgage or deed of trust, after the expiration of the time of redemption, when redemption is allowed by law, refuses or neglects to surrender possession thereof, after demand in writing by the person entitled thereto, or his or her agent." 735 ILCS 5/9-102(a)(6).

¶ 18 Unknown Occupants have not pointed to any specific language in section 9-102(a) that supports their contention, nor have we found any language requiring the Bank to demand immediate possession of the property in their written notice.¹ The only relevant requirement articulated in section 9-102(a) is the requirement that the Bank's demand be made in writing, which is not at issue here. See 735 ILCS 5/9-102(a)(6). Therefore, we cannot conclude that section 9-102(a) required the Bank to specify that they were demanding immediate possession of the property in its notice.

¶ 19 2. Section 9-104

¶ 20 Next, Unknown Occupants claim the trial court erred when it held that the Bank satisfied the notice requirements of section 9-104 of the Code of Civil Procedure (735 ILCS 5/9–104 (West 2014)) by posting its demand notice on the property. They argue that the statute does not authorize notice by posting alone and that the Bank knew that the property was occupied before the Bank posted its notice. These arguments are without merit.

¶ 21 When a party receives a property through foreclosure, that party may pursue a forcible entry and detainer action to evict individuals in possession of the property after the party makes a demand, in writing, for possession of the property. 735 ILCS 5/9–102(a)(6) (West 2014). Section 9–104 of the Code describes how a plaintiff may serve a defendant with the written demand:

¹ Section 9-104 of the Code provides a suggested template that states “To...I hereby demand immediate possession of the following described premises” however the Code expressly states that adoption of the suggested language is optional rather than mandatory. See 735 ILCS 5/9-104.

“The demand required by Section 9–102 of this Act may be made by delivering a copy thereof to the tenant, or by leaving such a copy with some person of the age of 13 years or upwards, residing on, or being in charge of, the premises; or in case no one is in the actual possession of the premises, then by posting the same on the premises; or if those in possession are unknown occupants who are not parties to any written lease, rental agreement, or right to possession agreement for the premises, then by delivering a copy of the notice, directed to ‘unknown occupants,’ to the occupant or by leaving a copy of the notice with some person of the age of 13 years or upwards occupying the premises, or by posting a copy of the notice on the premises directed to ‘unknown occupants.’” 735 ILCS 5/9-104.

¶ 22 Section 9-104 does not any contain language conditioning compliance on whether a party has knowledge that the premises are occupied. The only circumstances where notice by posting is authorized are where (1) no one is in actual possession of the premises or (2) the people in possession are unknown occupants who are not parties to a written lease, rental agreement, or right to possession agreement for the premises. *Id.* Therefore, we find the trial court did not err in its interpretation of section 9-104.

¶ 23 Next, Unknown Occupants claim that, even if the trial court interpreted the statute correctly, there was no evidence contradicting the existence of a right to possession agreement. They contend that one of the occupants, Barry Reed, lived at the property pursuant to an oral lease that arose when the owners gave Barry permission to reside at the property. We disagree.

¶ 24 The only mention in the record of Barry's relationship to the property is in Unknown Occupants' answer and affirmative defenses where they state, "Barry Reed is Mrs. Sanders' brother and has lived in the subject premises with the permission of the mortgagor since 2010." It is well established that an appellant has the burden to present a sufficiently complete record of

the proceedings at trial to support a claim of error, and any doubts which may arise from the incompleteness of the record will be resolved against the appellant. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). Our review of the record has uncovered no other evidence demonstrating the existence of an oral lease or right to possession agreement. Thus, we cannot say that the trial court found the Bank compliant with section 9-104 against the manifest weight of the evidence.

¶ 25 II. Motion *in Limine*

¶ 26 A. Standard of Review

¶ 27 A reviewing court will not disturb a trial court's decision to grant a motion *in limine* absent a clear abuse of discretion. *DiCosola v. Bowman*, 342 Ill.App.3d 530, 536 (2003). In determining whether there has been an abuse of discretion, this court may not substitute its judgment for that of the trial court or even determine whether the trial court exercised its discretion wisely. *Id.* A reviewing court may find an abuse of discretion only where “no reasonable person would take the position adopted by the trial court.” *Taxman v. First Illinois Bank of Evanston*, 336 Ill.App.3d 92, 97 (2002).

¶ 28 B. Discussion

¶ 29 Unknown Occupants contend the trial court erred in granting the Bank’s motions *in limine*, which precluded Unknown Occupants from referencing the foreclosure action in the forcible entry and detainer trial for possession. They argue that granting the motions were unfair because it prevented them from being able to raise legitimate defenses.

¶ 30 It is well established that a motion *in limine* which precludes the opponent from presenting a valid defense is an abuse of discretion. *Madison Associates v. Bass*, 158 Ill. App. 3d 526, 541 (1987) (citing *Duffy v. Midlothian Country Club*, 135 Ill. App. 3d 429, (1985)). At trial, Unknown Occupants raised the following defenses based on the foreclosure action: (1) the

Foreclosure Act did not allow posting alone as a proper method of serving the 90 day notice; (2) the judicial sale deed was invalid because the court lacked personal jurisdiction over the mortgagor; and (3) the Bank had already attempted to gain possession of the subject property by locking out all occupants on the basis of their order of possession in the foreclosure case, which was inconsistent with their having already filed the required notice.

¶ 31 In granting the Bank's motions, the trial court relied on the holding in *Northwest Mortgage, Inc. v. Ozuna*, 302 Ill. App. 3d 674, 680 (1998) where the court held that an action for mortgage foreclosure is separate and distinct from an action for forcible entry and detainer. There, the court explained that each action "proceeds upon different facts, involves different parties and provides different relief." *Id.* at 680-81. As a result, the trial court concluded that references to the foreclosure action were not relevant to the action for forcible entry and detainer and that such references could induce sympathy from the jury. Unknown Occupants argue that matters germane to the forcible entry and detainer action are allowed as a defense, citing *Rosewood Corporation v. Fisher*, 46 Ill. 2d 249, 257 (1970). They argue that the validity of the plaintiff's right to possession is germane to an action under section 9-106 of the Code (735 ILCS 5/9-106).

¶ 32 At the outset we must note that the crux of Unknown Occupants' defenses are challenges to the validity of the Bank's title and their right to immediate possession. The scope of section 9-106 is limited and is designed to establish an efficient process by which parties may assert their rights to immediate possession of a property without the potential for encumbrance or delay arising from unrelated issues or claims. *Teton, Tack & Feed, LLC v. Jimenez*, 2016 IL App (1st) 150584, ¶14 (citing *Rosewood*, 46 Ill.2d at 256). Accordingly, section 9-106 limits the issues

which parties to such an action may raise during the proceedings. *Id.* Section 9–106 of the Code states, in pertinent part, the following:

“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 2014).

¶ 33 Thus, in order for Unknown Occupants’ allegations that the Bank held an invalid title, and the evidence purporting to support them, to be relevant, issues of title must be “germane to the distinctive purpose of the proceeding.” See *Teton*, 2016 IL App (1st) 150584 at ¶14. However, the case law makes clear that a challenge to the validity of the Bank’s title is only “germane” where it establishes or clarifies Unknown Occupants’ right to immediate possession. *Id.* (citing *Rosewood*, 46 Ill.2d at 256).

¶ 34 As this court has made clear, “[f]orcible entry and detainer is a summary statutory proceeding to adjudicate rights to possession and is unhampered and unimpeded by questions of title and other collateral matters not directly connected with the question of possession.” (Internal quotation marks omitted.) *Spanish Court Two Condominium Ass'n v. Carlson*, 2012 IL App (2d) 110473, ¶ 20 (quoting *Rosewood*, 46 Ill.2d at 255). Additionally, this court has held that serious title disputes are not directly connected with the question of possession and, thus, are not germane to proceedings under section 9-106. In *Heritage Pullman Bank v. American National Bank & Trust Co. of Chicago*, 164 Ill. App. 3d 680, 685 (1987) the court stated:

“The scope of judicial inquiry is confined to a determination of the right to immediate possession. The question of title, therefore, cannot be litigated. [Citation Omitted.] Evidence of title may be admissible for the limited purpose of establishing or clarifying one's right to

immediate possession. However, when the admission of title documents requires an adjudication of contradictory claims to title, such documents are inadmissible. A serious title dispute cannot be decided in an action under the forcible entry and detainer statute.” *Id.*

¶ 35 Accordingly, Unknown Occupants’ arguments are misplaced. The distinctive purpose of a proceeding under the section 9-106 is to determine which party has the right to immediate possession of the relevant premises, not the validity of either party’s title to the premises. *Teton*, 2016 IL App (1st) 150584 at ¶17. However, instead of arguing that the Unknown Occupants’ had a superior right to immediate possession over the Bank, they raised defenses challenging the validity of the Bank’s title in an attempt to attack the Bank’s right to possession without ever asserting their own. *Id.* Thus, Unknown Occupants’ attack on the Bank’s title was irrelevant to the crucial issue in this summary proceeding. *Id.* As a result, we cannot say that the trial court abused its discretion by granting the Bank’s motions *in limine*.

¶ 36 For the foregoing reasons, we affirm the decision of the trial court.

Affirmed.