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FIFTH DIVISION
December 2, 2016

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PAMELA BENFORD,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 11 M1 17472
)	
EVERETT COMMONS LLC,)	The Honorable
)	Sidney A. Jones III,
Defendant-Appellee.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

ORDER

¶1 *HELD:* Plaintiff forfeited review of the denial of her motion for leave to file an attorney fee petition under the RLTO where she failed to file the petition in a timely manner. Cause remanded to correct the trial court's judgment order.

¶2 Plaintiff, Pamela Benford, appeals from an order of the trial court denying her motion for leave to file a petition for attorney fees pursuant to section 5-12-180 of the Chicago Residential Landlord and Tenant Ordinance (RLTO) (Chicago Municipal Code § 5-12-180 (amended Nov. 6, 1991)). Plaintiff contends the trial court impermissibly

imposed a new standard for obtaining attorney fees under the RLTO by requiring that a “prevailing party” must be awarded damages. Based on the following, we dismiss this appeal.

¶3

FACTS

¶4 This case appears before us for a third time. Plaintiff initially filed an action¹ against defendant, Everett Commons, LLC, seeking damages for defendant’s failure to maintain her rental apartment in compliance with section 5-12-150 of the RLTO and for breach of the implied warranty of habitability. Plaintiff additionally sought an award for attorney fees and court costs under the RLTO. A multi-day jury trial commenced in October 2012. At the close of plaintiff’s case-in-chief, defendant moved for a directed verdict based on plaintiff’s inability to prove damages. The trial court granted the motion with regard to property damages, but denied the motion with regard to personal injury damages. Following the remainder of the trial, the jury entered a verdict providing as follows:

“We, the jury, find for the plaintiff and against the defendant, and further find the following:

First: Without taking into consideration the question of reduction of damages due to any affirmative defense, we find that the total amount of damages suffered by the plaintiff as a proximate result of the occurrence in question is \$0
***.

Second: Considering the first and third affirmative defenses [plaintiff was barred from recovery because she failed to provide defendant access to her

¹ The initial complaint was filed in November 2011 and an amended complaint was filed in September 2012.

apartment for inspections or repairs and plaintiff failed to pay rent], we find that the reduction attributable solely to plaintiff's conduct is \$5,850.

Third: After reducing the total damages sustained by the plaintiff by the reduction attributable solely to the plaintiff's conduct, we assess the plaintiff's recoverable damages in the sum of \$0."

The trial court subsequently entered a judgment on October 22, 2012, stating:

"The jury having returned a unanimous verdict in favor of defendant and against plaintiff Benford:

IT IS HEREBY ORDERED:

1) Judgment is hereby entered on the verdict in favor of defendant and against plaintiff.

2) Defendant's costs to be reimbursed by plaintiff."

¶15 On November 20, 2012, plaintiff filed a motion to reconsider, arguing the circuit court erred by: (1) denying plaintiff's counsel's request for an opportunity to file a brief in response to defendant's motion for a directed verdict; (2) prohibiting plaintiff from testifying to the value of her damaged personal property; (3) prohibiting the jury from considering plaintiff's damaged personal property based on market value; and (4) prohibiting the jury from considering damages related to plaintiff's custom-made clothing. Plaintiff requested a new trial on damages only. Plaintiff did not file a request for attorney fees. The motion was denied on December 20, 2013.

¶16 Plaintiff filed a timely appeal. On appeal, plaintiff argued the circuit court erred in denying her motion to reconsider because: (1) it erred in barring the jury from considering her lay testimony regarding her property damage; (2) the jury's verdict was

against the manifest weight of the evidence; and (3) the jury's verdict was legally inconsistent. On May 2, 2014, this court affirmed the decision of the circuit court as it related to barring plaintiff's testimony regarding her damaged personal property. *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 130314, ¶¶ 31-37 (*Benford I*). With regard to plaintiff's argument challenging the jury's verdict as against the manifest weight of the evidence and as legally inconsistent, this court found plaintiff did not raise those arguments in her posttrial motion; therefore, the arguments were forfeited. *Id.* ¶¶ 43, 45. This court, however, addressed defendant's responsive argument that the jury's verdict actually was "an inadvertent error of form" and was meant to be a unanimous verdict in favor of defendant and against plaintiff. *Id.* ¶ 46. Contrary to defendant's responsive argument, this court found:

"nothing in the record to substantiate [defendant's] assertion that the jury did not intend to find for plaintiff and against defendant. The fact that the jury awarded plaintiff zero damages does not mean that it found in defendant's favor as to liability. It merely means that, although the jury found defendant liable for damages, it found plaintiff did not prove those damages. *** [W]e presume that the jury had a reason for using Verdict Form B and intended to find for plaintiff."
Id. ¶ 49.

As a result, this court held that "the [circuit] court erred by changing the verdict from one in favor of plaintiff on the issue of liability to a finding in favor of defendant." *Id.* ¶ 50. This court further stated that "on this record, the court had no basis to enter an order contrary to the jury verdict. Pursuant to that verdict, plaintiff was the prevailing party

below.” *Id.* ¶ 51. This court, therefore, remanded the cause to the circuit court “for correction of the court’s order as set forth” in the opinion. *Id.* ¶ 57.

¶7 While *Benford I* was pending, the case continued before the circuit court on defendant’s request for reimbursement of attorney fees and costs. In its October 22, 2012, order entering judgment “on the jury verdict in favor of defendant,” the circuit court ordered “defendant’s costs to be reimbursed by plaintiff.” In November 2012, defendant sought reimbursement of its fees under section 5-12-180 of the RLTO as the “prevailing party.” Plaintiff contested defendant’s ability to collect attorney fees not as the “prevailing party,” but because defendant sought to evict plaintiff (thus negating its ability to collect fees) and because defendant failed to seek a remedy available under the RLTO (instead seeking fees based on an affirmative defense). On February 6, 2013, the circuit court granted defendant’s motion for reimbursement and ordered defendant to file an attorney fee petition. Then, on March 14, 2013, the circuit court granted defendant’s attorney fee petition over plaintiff’s objections, ordering plaintiff to pay \$24,785 to defendant for attorney fees and court costs. Plaintiff subsequently appealed the March 14, 2013, order.²

¶8 In *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 131231 (*Benford II*), plaintiff argued the circuit court erred in granting defendant reimbursement of its attorney fees and costs because: (1) the RLTO provides for attorney fees to the prevailing party, which was not defendant; (2) the court usurped the jury’s role; (3) the RLTO voids the parties’ lease terms for attorney fees; (4) the jury verdict must be reversed since the evidence showed plaintiff did not restrict access to her apartment; and (5) attorney fees

² Plaintiff did not file a motion to reconsider the February 6, 2013, or March 14, 2013, orders.

are not provided in the RLTO's landlord remedies for improper denial of access. Plaintiff did not assert an argument that she, as the prevailing plaintiff, was entitled to attorney fees. This court entered its opinion in *Benford II* on May 2, 2014, the same date *Benford I* was issued. With regard to plaintiff's first argument, this court held that there was no basis for awarding attorney fees and court costs to defendant under section 5-12-180 of the RLTO as plaintiff, not defendant, was the prevailing party. *Id.* ¶17, 22. In doing so, this court referenced its finding in *Benford I*. As a result, this court reversed the circuit court's decision ordering plaintiff to reimburse defendant for its attorney fees and court costs. The cause was remanded for correction of the circuit court's order in compliance with the opinion. *Id.* ¶ 34. In addition, this court found it need not address plaintiff's remaining arguments regarding defendant's ability to obtain attorney fees under the RLTO since defendant did not file an action in the case to obtain relief of any kind. *Id.* ¶¶ 26, 28. This court further found plaintiff's argument regarding whether the circuit court usurped the role of the jury was moot in light of its decision. *Id.* ¶ 30. Finally, this court held that plaintiff forfeited her argument, which had not been raised in her posttrial motion, that the jury verdict must be reversed since the trial evidence demonstrated she did not restrict access to the landlord. *Id.* ¶ 32.

¶19 On July 16, 2014, defendant filed a motion for correction of the circuit court's orders. On the same date, plaintiff also filed a motion to correct the circuit court's orders. Plaintiff, however, additionally requested leave to file an attorney fee petition. A hearing was held on September 18, 2014. On October 29, 2014, the circuit court issued a memorandum opinion and order, amending its prior judgment in favor of defendant

without costs and denying plaintiff's request for leave to file an attorney's fee petition.

More specifically, the circuit court amended its order to read:

“The Jury having rendered Verdict Form B for the plaintiff and against the defendant and finding the total amount of damages suffered by the plaintiff as a proximate result of the occurrence in question is \$0, finding a reduction attributable solely to the plaintiff's conduct in the amount of \$5,850, and assessing the plaintiff's recoverable damages in the sum of \$0, judgment is hereby entered for the defendant without costs.”

In so doing, the circuit court found that “the judgment on the verdict should still be for the defendant by virtue of the plaintiff not having proven an essential element of her case, that being the issue of damages.” The circuit court concluded that section 5-12-110(e) of the RLTO, the statute upon which plaintiff asserted her claim, was a remedial statute that did not impose automatic or mandatory liability. Therefore, plaintiff was required to prove both liability and damages in order to prevail on her section 5-12-110(e) claim. The court held that plaintiff's inability to prove damages was fatal to her cause of action. In addition, because the jury's award of zero damages compelled entry of judgment for defendant, the circuit court concluded that plaintiff was not entitled to attorney fees as the “prevailing party.” Moreover, the court observed that plaintiff never sought attorney fees in her posttrial motions prior to filing either of her notices of appeal and, therefore, effectively forfeited the issue. The circuit court denied plaintiff's subsequent motion to reconsider the October 29, 2014, order. This timely appeal followed.

¶10

ANALYSIS

¶11 Plaintiff contends the circuit court erred in denying her leave to file an attorney fee petition pursuant to section 5-12-180 of the RLTO. Defendant responds that plaintiff forfeited her attorney fee request by failing to timely file that request.

¶12 Whether plaintiff forfeited her attorney fee request is a question of law that we review *de novo*. See *A.M. Realty Western L.L.C. v. MSMC Realty, L.L.C.*, 2016 IL App (1st) 151087, ¶ 72. Under *de novo* review, this court performs the same analysis that the trial judge would perform. *Id.*

¶13 Section 5-12-180 of the RLTO provides:

“Except in cases of forcible entry and detainer actions, the prevailing plaintiff in any action arising out of a landlord’s or tenant’s application of the rights or remedies made available in this ordinance shall be entitled to all court costs and reasonable attorney’s fees.” Chicago Municipal Code § 5-12-180 (amended Nov. 6, 1991).

¶14 In plaintiff’s first motion to reconsider, that which followed the jury’s verdict and the circuit court’s October 22, 2012, judgment, she did not raise the issue of her right to attorney fees as the “prevailing plaintiff.” Instead, plaintiff’s November 20, 2012, motion to reconsider challenged the circuit court’s rulings that prohibited her from testifying regarding damages to her personal property and requested a new trial on damages. Illinois Supreme Court Rule 366(b)(2)(iii) provides that, in a jury case, “[a] party may not urge as error on review of the ruling on the party’s post-trial motion any point, ground, or relief not specified in the motion.” Ill. S. Ct. R. 366(b)(2)(iii). Rule 366(b)(2)(iii) does not precisely fit the instant set of facts, however, because plaintiff did not raise the issue of

her right to attorney fees as the “prevailing plaintiff” on appeal (*Benford I*) from that December 20, 2013, posttrial order denying her motion to reconsider. In fact, plaintiff did not even raise the matter of her right to attorney fees as the “prevailing plaintiff” on appeal (*Benford II*) from the circuit court’s February 6, 2013, order granting defendant’s motion for reimbursement and its March 14, 2013, award of attorney fees and court costs to defendant as the “prevailing party.” Instead, plaintiff merely argued, in relevant part, that defendant was not the “prevailing party” and, therefore, was not entitled to attorney fees under the RLTO. Again, nothing was raised by plaintiff asserting her right to attorney fees under the RLTO as the “prevailing plaintiff” in her motion to reconsider the court’s October 22, 2012, judgment following the jury verdict, in response to defendant’s request for attorney fees as the “prevailing party,” in response to the trial court’s order awarding such fees to defendant, nor in either of her prior appeals (*Benford I* and *Benford II*).

¶15 Plaintiff argues that she could not request attorney fees pursuant to section 5-12-180 of the RLTO until after the issuance of *Benford I* and *Benford II*, both on May 2, 2014, because, until that time, the trial court’s October 22, 2012, judgment entered in favor of defendant remained effective. Accordingly, plaintiff maintains she could not assert her section 5-12-180 RLTO claim for attorney fees until this court deemed her the “prevailing plaintiff.” We disagree.

¶16 This court has instructed:

“A circuit court retains jurisdiction for 30 days after its entry of a final order or judgment. [Citations.] A circuit court has jurisdiction to entertain a motion for attorney fees filed within 30 days of the entry of a final judgment

without regard to a previously filed notice of appeal. [Citations.] In addition, a circuit court has jurisdiction to address a timely-filed motion for attorney fees regardless of whether the request is considered to be part of the original action or collateral to the original claim. [Citations.]” *Herlehy v. Marie V. Bistersky Trust* Dated May 5, 1989, 407 Ill. App. 3d 878, 898-99 (2010).

In other words, a trial court loses jurisdiction over a matter 30 days after entry of the final judgment, unless a timely postjudgment motion is filed. See *Illinois Department of Financial and Professional Regulation v. Rodriguez*, 2012 IL 113706, ¶ 32 (analyzing jurisdiction to consider statutory attorney fees).

¶17 The jury entered its verdict and the court entered its judgment on the verdict on October 22, 2012. Again, the jury verdict was in plaintiff’s favor and plaintiff had requested attorney fees for her RLTO claim in her complaint. Plaintiff’s subsequent motion to reconsider contesting the matter of damages and requesting a new trial on damages was denied on December 20, 2013. Accordingly, plaintiff had 30 days from December 20, 2013, to file a request for leave to file an attorney fee petition. Plaintiff’s request for leave to file an attorney fee petition was filed on July 16, 2014, well beyond the 30 day time period during which the circuit court retained jurisdiction. In fact, this court has recognized plaintiff’s repeated forfeiture of arguments in our prior opinions due to her failure to raise the arguments in a timely manner. *Benford*, 2014 IL App (1st) 130314, ¶ 45; *Benford*, 2014 IL App (1st) 131231, ¶ 32. Those forfeited arguments contested the jury’s finding on damages, even arguing that the jury’s finding was legally inconsistent with its finding in her favor on liability. Accordingly, plaintiff, at least by January 18, 2013, when she filed the notice of appeal in *Benford I*, recognized her

position as having prevailed in her RLTO claim against defendant insofar as liability. Yet, plaintiff did not bring a fee petition before the circuit court despite having filed a notice of appeal with the underlying contentions relating to her having prevailed in her RLTO claim and despite initially having requested attorney fees in her complaint. See *Herlehy*, 407 Ill. App. 3d at 898-99.

¶18 Furthermore, taking into consideration defendant's motion for reimbursement of attorney fees and its attorney fee petition, granted by the circuit court on February 6, 2013, and March 14, 2013, respectively, there is nothing in the record establishing a claim by plaintiff for her attorney fees at that time either. Instead, in response to defendant's attorney fee requests, plaintiff contested the propriety of awarding the attorney fees to *defendant* as it was not the "prevailing party." Plaintiff never asserted *her* RLTO rights to attorney fees as the "prevailing plaintiff." Therefore, plaintiff did not raise a claim for attorney fees under the RLTO even as late as within 30 days of the circuit court's March 14, 2013, order granting defendant's fee petition. Again, plaintiff's request for leave to file a fee petition was not filed until July 16, 2014.

¶19 We recognize that jurisdiction in the circuit court was reestablished to comply with this court's May 2, 2014, directive to amend the October 22, 2012, judgment in compliance with the jury's verdict (*Benford I*) and reversing the court's orders awarding attorney fees and court costs to defendant (*Benford II*). This court, however, did not instruct the circuit court to award, or even consider awarding, attorney fees to plaintiff under the RLTO. Plaintiff fails to cite any authority demonstrating that her attorney fee request was a collateral matter of which the court retained indefinite jurisdiction. We, therefore, hold that the circuit court retained authority to award fees only while it

maintained jurisdiction over the underlying issue, namely, plaintiff's RLTO claim against defendant. Accordingly, we find plaintiff's request to file attorney fees was forfeited as untimely and dismiss this appeal as a result.

¶20 Although we conclude that plaintiff has forfeited her request for attorney fees, we must remand this cause yet again with instructions to the trial court to correct its judgment to reflect the jury verdict in favor of plaintiff. Following our remands in *Benford I* and *II*, the trial court entered the following judgment order:

“The Jury having rendered Verdict Form B for the plaintiff and against the defendant and finding the total amount of damages suffered by the plaintiff as a proximate result of the occurrence in question is \$0, finding a reduction attributable solely to the plaintiff's conduct in the amount of \$5,850, and assessing the plaintiff's recoverable damages in the sum of \$0, judgment is hereby entered for the defendant without costs.”

The judgment order must read that the judgment is entered for plaintiff. See *Benford*, 2014 IL App (1st) 130314, ¶ 51.

¶21 CONCLUSION

¶22 We conclude that plaintiff failed to timely file her request for leave to file an attorney fee petition. This appeal is, therefore, dismissed. We, however, must remand this cause to correct the trial court's judgment in compliance with *Benford*, 2014 IL App (1st) 130314, ¶ 51.

¶23 Dismissed; remanded with instructions.