2016 IL App (1st) 152337-U

SIXTH DIVISION
Order filed: July 15, 2016

No. 1-15-2337

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 DISTRICT

OGLESBY HOMES BUILDING NFP, Plaintiff-Appellee, v. EDWIN EKONG, and UNKNOWN OCCUPANTS, Defendants, (Edwin Ekong, Defendant-Appellant).	)))))))))))	Appeal from the Circuit Court of Cook County No. 14 M1 715273 Honorable James P. Pieczonka, Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's denial of the defendant's petition to vacate default judgment is affirmed where the defendant failed to present a sufficient record on appeal.

¶ 2 The plaintiff, Oglesby Homes Building NFP, a condominium association, brought suit against the defendant, Edwin Ekong, a condominium owner, alleging that it was entitled to take possession of the defendant's condominium because he failed to pay assessment fees and "other

common charges." A default judgment was entered against the defendant. The defendant filed a petition to vacate the default judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)), which the circuit court denied. On appeal, the defendant argues that the circuit court erred by denying his petition to vacate the default judgment because he satisfied the requirements for vacatur under section 2-1401 of the Code. For the following reasons, we affirm.

¶ 3 On July 10, 2014, the plaintiff filed its complaint against the defendant, alleging that he was unlawfully withholding possession of a condominium, Unit 6 of 6740 South Oglesby in Chicago (premises), because he was not paying assessment fees and other common charges. The plaintiff requested possession of the premises as well as $62,300.78 for "assessments, special assessments, *** other common charges, *** court costs and attorneys' fees, plus such additional assessments, special assessments and other common charges for said premises accruing from July 9, 2014, to the date of trial."

¶ 4 On July 12, 2014, the sheriff's office of Cook County personally served the defendant with the complaint and summons. The summons required the defendant to file an appearance by July 30, 2014. The defendant, however, did not file an appearance or an answer to the plaintiff's complaint; therefore, on August 5, 2014, the plaintiff moved for a default judgment.

¶ 5 The defendant appeared before the court *pro se* on August 19, 2014, for the hearing on the plaintiff's motion for a default judgment, and the case was continued to September 16, 2014. When the defendant returned to court on September 16, 2014, the court advised him to hire an attorney, and the defendant requested additional time to do so. By agreement of the parties, the matter was continued to September 30, 2014. The record conveys that an attorney for the defendant was present in court on one occasion, on September 30, 2014, and that the parties agreed

to continue the matter. However, no formal appearance was ever filed by that attorney. We note, thereafter, the case was continued several times, and was ultimately set for trial on December 17, 2014.

¶ 6 On December 17, 2014, neither the defendant nor his attorney appeared for trial. Accordingly, on that date, the circuit court entered a default judgment in favor of the plaintiff in the amount of $69,828, plus $750 in attorney fees. On February 17, 2015, the plaintiff moved for a memorandum of judgment. On March 3, 2015, the defendant appeared *pro se* before the court seeking to oppose the plaintiff's motion for a memorandum of judgment, and the court suggested that the defendant "get a lawyer." The court granted the plaintiff's motion for a memorandum of judgment that same day. Subsequently, the defendant hired another attorney.

¶ 7 On April 14, 2015, the defendant, through his attorney, filed a petition to vacate the default judgment pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2014)). In the petition, the defendant argued that he was entitled to vacatur of the default judgment because he had a meritorious defense. Specifically, he stopped paying the monthly assessments only after his premises became uninhabitable due to the plaintiff's failure to repair and maintain the "common elements" of the condominium. The defendant also argued that he acted with due diligence in defending his case because he appeared in court twice and hired an attorney to represent him. In support of his petition to vacate the default judgment, the defendant attached his own affidavit to the petition. In response, the plaintiff argued that the defense was not meritorious because unit owners' claims that they are not obligated to pay assessments because of an association's "failure to repair and maintain the common elements is contrary to the Condominium Act [(735 ILCS 5/9-111(a) (West 2014))]." The plaintiff further contended that the defendant was not diligent in

presenting his defense as he failed to follow the progress of his own case and did not timely file his petition.

¶ 8 On June 3, 2015, a hearing was held and the court denied the defendant's petition in a written order, which stated that, in making this determination, it was "fully advised in the premises" and that it "heard the argument of the parties." No transcript of this hearing appears in the record on appeal.

¶ 9 On July 6, 2015, the defendant filed a *pro se* motion to reconsider the denial of his petition to vacate default judgment. On July 16, 2015, following a hearing, the circuit court denied the motion to reconsider by way of written order, stating that it was "fully advised" in the premises. Again, no transcript of the hearing appears in the record on appeal. This appeal followed.

¶ 10 We first note that the plaintiff, as appellee, did not file an appellate brief. Nevertheless, because the record in the case is simple and the claimed errors are such that this court can easily decide them without the aid of an appellee's brief, we will decide the merits of this appeal. See *First Capitol Mortgage Corp. v. Talandis Construction Corp*., 63 Ill. 2d 128, 132 (1976).

¶ 11 The defendant argues that the circuit court erred in denying his motion to reconsider the denial of his petition to vacate the default judgment because he exercised due diligence by hiring his first attorney to answer the plaintiff's complaint and advise him about any court appearances. According to the defendant, his first attorney did not notify him about the court proceedings, and the default judgment was entered due to the attorney's carelessness and negligence.

¶ 12 We are unable to reach the merits of the defendant's argument, however, because he did not provide us with a sufficient record on appeal. *Midwest Builder Distributing, Inc. v. Lord and Essex, Inc*., 383 Ill. App. 3d 645, 657 (2007) (where "the gap in the record [was] sufficiently serious that [the court could not] fully reach the merits of the case."). The Illinois supreme court

has established that, in reviewing an alleged error of the circuit court, it is the appellant's responsibility to present "a sufficiently complete record of the proceedings." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant." *Id.* at 391. When the record on appeal is insufficient, "it [is] presumed that the order entered by the trial court [is] in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 391-92. The reviewing court shall "indulge in every presumption favorable to the judgment from which the appeal is taken, including that the [circuit] court ruled or acted correctly." *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757-58 (2006). In other words, "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch.* 99 Ill. 2d at *392.*

¶ 13 In this case, the record on appeal does not contain any transcripts of the proceedings, including the transcript of the June 3, 2015, hearing on the defendant's petition to vacate the default judgment, or the transcript of the July 16, 2015, hearing on the defendant's motion to reconsider. The record is also devoid of a bystander's report or an agreed statement of facts filed pursuant to Supreme Court Rules 323(c) and (d). Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005). Moreover, the written orders from the June 3 and July 16, 2015, hearings, which are included in the record, do not reveal what factual or legal grounds the circuit court relied upon to make its decisions. As such, we do not know the court's reasoning for denying the defendant's petition, and we are unable to review the merits of the defendant's appeal. We further note that, because both orders state that the circuit court was "fully advised" in the premises, we presume that the court entered these orders based upon evidence sufficient to support its judgment. *Smolinski*, 363 Ill. App. 3d at 758. The presumption that the circuit court made the correct decision is even stronger

when it is evident that the court was "fully advised in the premises." *Smolinski*, 363 Ill. App. 3d at 758. "Such language raises the presumption that the judgment is supported by the evidence in absence of any contrary indication in the order or record." *Boysen v. Antioch Sheet Metal, Inc.*, 16 Ill. App. 3d 331, 333 (1974). In sum, because the defendant has failed to provide a sufficient record of the proceedings, we must presume that the orders entered by the circuit court were in conformity with laws and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92. We, therefore, cannot say that the court's decision to deny the defendant's petition was improper.

¶ 14 For the foregoing reasons, we affirm the circuit court's denial of the defendant's petition.

¶ 15 Affirmed.