2016 IL App (1st) 153508-U

SIXTH DIVISION
Order filed: November 4, 2016

No. 1-15-3508



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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| JAMES GANNON, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County |
| | ) | |
| v. | ) | No. 15 M1 703763 |
| | ) | |
| RAJ RAI and any and all unknown occupants, | ) | Honorable |
| | ) | Eve M. Reilly, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held*: The judgment of the trial court is affirmed where: (1) it did not commit reversible error in refusing to admit a Sheriff's report into evidence; and (2) its denial of the defendant's petition for a rule to show cause was not against the manifest weight of the evidence where the plaintiff did not willfully disobey a court order.

¶ 2 The defendant, Raj Rai, appeals from the trial court's order denying his petition for a rule to show cause, seeking a finding that the plaintiff, James Gannon, was in indirect contempt of court for illegally locking him out of an apartment that he was renting from Gannon. On appeal, Rai contends that: (1) the trial court committed reversible error in refusing to admit an "Eviction

Unit Worksheet" into evidence; and (2) the trial court's finding that he abandoned the apartment prior to being locked-out is against the manifest weight of the evidence. For the reasons which follow, we affirm.

¶ 3 On September 23, 2014, Gannon leased Unit 904 located at 501 North Clinton Street in Chicago ("premises") to Rai for a monthly rent of $3,500. The premises is located within Kinzie Park Tower Condominium ("condominium"). The lease term commenced on October 31, 2014, and ended on October 31, 2015. During the course of the tenancy, Rai stopped paying rent.

¶ 4 On February 24, 2015, Gannon filed a single-count complaint pursuant to the Forcible Entry and Detainer Act (Detainer Act) (735 ILCS 5/9-101 *et seq.* (West 2014)), against Rai and unknown occupants, seeking possession of the premises and the sum of $8,750 as rent or damages, plus any costs or rent which accrued through the trial date.

¶ 5 On June 17, 2015, the court entered an order finding that Gannon was entitled to possession of the premises and also entered a money judgment of $19,250 in favor of Gannon for the rent due through May 31, 2015. The order also provided that enforcement was stayed until June 27, 2015.

¶ 6 On September 4, 2015, Rai filed a petition for a rule to show cause, seeking to hold Gannon in contempt for resorting to self-help through force in violation of section 9-101 of the Detainer Act (735 ILCS 5/9-101) and section 5-12-160 of the Chicago Residential Landlord Tenant Ordinance (RLTO) (Chicago Municipal Code § 5-12-160 (amended Nov. 6, 1991)). According to the allegations contained in the petition, on July 7, 2015, Rai, and a moving company hired by Rai, began moving Rai's property out of the premises. Rai alleged that he left the premises around midnight "to get a few hours of sleep." When he returned the following morning, he discovered that the locks had been changed and he could not enter the premises. In

his prayer for relief, Rai requested access to the premises to remove the rest of his personal belongings and $5,000 in damages.

¶ 7 On October 22, 2015, the trial court commenced a hearing on Rai's petition for a rule to show cause. Rai, who lived at the premises with his wife and two daughters, testified that, after the court entered an order for possession in Gannon's favor, he made arrangements to vacate the premises by finding a "new place to rent." He also hired a moving company, scheduled a move-out time with the condominium's management office for 3 p.m. on July 7, 2015, and paid a $600 move-out deposit. Rai testified that the movers arrived on time and, by 5 p.m., had moved 28 "big furniture" items out of the premises, including "beds, mattresses, dressers, a sectional, a dining room table, dining room chairs, bunk beds, [and] night stands." Rai stated, however, that the movers did not move "anything that was in the kitchen," including the "appliances [and] convection oven," and the closet in the master bedroom was "completely full." He also stated that the movers left behind a TV, shoes, purses, and a small safe containing passports and petty cash.

¶ 8 Rai further testified that, although the movers moved his furniture to the "new building," he returned to the premises around 6:30 or 7:30 p.m. and stayed the night. According to Rai, he intended to finish moving out the following day, and "return the unit back to Mr. Gannon clean and proper." Rai stated that he left the premises at 8:30 a.m. the following morning, but when he returned two hours later at 10:30 a.m., the key fobs and garage door opener were not working. He sent an email to Gannon at approximately 10:45 a.m advising him that the garage door opener and key fobs were not working and requesting that he "get in touch with [him] ASAP." Rai also went to the "security gate" to inquire about his keys and was told that he was not a

resident anymore. Rai denied telling Gannon that he was moving out or had otherwise vacated the premises.

¶ 9 On July 13, 2015, Rai sent another email to Gannon demanding that he "contact [him] immediately so [he] can make arrangements to complete [the] move out." Rai testified that Gannon never replied to his emails and, as a result, he contacted the condominium's management company "to find out what was going on." Rai explained that the management company agreed to let him into the premises to finish packing on July 17, 2015. However, when he arrived at the security gate on July 17, he was told that he would be arrested for "trespassing" if he entered the premises. Rai testified that he called the management office around 6 p.m. but no one answered the phone. On July 19, 2015, Rai sent another email to Gannon requesting that he contact him and give him access to the premises, but Gannon never replied.

¶ 10 On cross-examination, Rai acknowledged that he hired a moving company to move "[a]ll of the big furniture items," but they did not move his 60-inch TV because "[i]t could not fit on the cart." Rai also admitted that, following the July 7, 2015, move, he did not contact "the building" to inform them that he was not finished moving. When asked where he moved to, Rai answered, "[t]o my family member's unit," four blocks east of the premises on West Hubbard Street.

¶ 11 Theodore Noose, the chief engineer at the condominium, testified that, on July 8, 2015, he received a "work ticket" requesting he change the lock to the premises. Noose confirmed that he changed the lock at 9:15 a.m. on July 8, 2015. He clarified, however, that he did not enter the premises since the lock can be changed without opening the door. When asked whether he had ever gone inside the premises after July 8, 2015, Noose stated that he "recently" entered the

premises with the building manager and Rai, but Rai did not identify any items that belonged to him.

¶ 12 Noose further testified that, on August 26, 2015, he was at work when deputies from the Cook County Sheriff's Department came to evict Rai from the premises. During his testimony, counsel for Rai questioned Noose about an "Eviction Unit Worksheet" that was prepared by one of the Sheriff's deputies. Noose identified his signature on the first page of the document and explained that he signed it at the request of one of the deputies to acknowledge that the Sheriff was at the premises, but "[t]hat's the only thing [he] know[s] about it." Noose denied making any statements to the deputies and specifically denied telling them that Rai had personal belongings inside the premises. When asked again if he made any statements to the deputies regarding what was inside the premises, Noose answered, "[n]o, because I didn't know what was in his unit."

¶ 13 Following Noose's testimony, the defense rested. The trial court explained that the procedure on a petition for a rule to show cause is that if "the petitioner presents a *prima facie* case that there has been a violation ***, then the rule is issued, and then the respondent to the petition would then present evidence as to why they should not be held in contempt." Following arguments, the court determined that Rai established a *prima facie* case that Gannon violated the order for possession.

¶ 14 Gannon presented the testimony of Jason Whitely, the condominium's office manager. Whitley testified that Rai submitted a move-out form in which he listed the move-out date as July 7, 2015, and that Rai had a moving truck on that date. Whitely also stated that he had a phone conversation with Rai around July 7, 2015, to schedule a time for Rai to "come and get his belongings," but that a time was never scheduled. Whitely explained:

> "one of us suggested either Friday evening or Saturday morning, and he said that he would call back to let us know for sure. We didn't hear back from him. And I tried calling him I want to say once or twice after that and that was—I never heard back from him. That was my only interaction with him."

Whitley testified that Rai had not made any other attempts to contact him or schedule a time to go into the premises. On cross-examination, Whitley acknowledged that when he spoke to Rai during the week of July 7th, Rai stated that he had belongings within the premises and that he wanted to retrieve them.

¶ 15 Following Whitley's testimony, Gannon recalled Rai to testify as an adverse witness. Rai admitted that he did not comply with the trial court's order for possession, which gave him until June 27, 2015, to vacate the premises. Rai also testified that he currently lives with a family member on West Hubbard Street, but that the moving company moved his furniture to another building at 400 North Clinton Street. He clarified that he sleeps at this family member's unit and that his furniture was moved into the "other apartment."

¶ 16 Gannon testified on his own behalf. According to Gannon, he received a call from the "building" on July 7, 2015, between 11 a.m. and 1 p.m., informing him that Rai was moving out that day. Gannon also testified that he received a phone call from the "building" informing him that Rai had the right to inspect the premises "on a certain day at eleven o'clock."

¶ 17 After hearing the parties' arguments, the trial court took the matter under advisement. On November 5, 2015, the court denied Rai's petition for a rule to show cause. In its oral findings, the court explained as follows:

> "I do believe that you cannot forcibly evict somebody who has moved. According to Mr. Raj Rai's own testimony, he hired a moving company and move

> [*sic*] all the large items out of his home on the 7th. He signed a document with the building stating that that was the date of his move. He never requested any additional time to move or let them know that he was not going to move.
>
> There was testimony that he did leave, from him that he did leave some belongings behind but he had no proof of belongings being in the house, and the building witness—let me see what his name was. The maintenance man in the building testified that he recently went into the unit with Raj Rai and that there was [*sic*] really no items of significance in the unit.
>
> So I do believe that he did not have a continued right of possession and he was no longer in possession when the defendants [*sic*] changed the locks. So I do think for that reason, they were not required to wait to change the locks until the sheriff came out six weeks later when, for all they knew, he had already moved."

¶ 18 Also on November 5, 2015, the trial court entered a written order denying Rai's petition for a rule to show cause, "for [the] reasons stated in oral ruling." This appeal followed.

¶ 19 At the outset, we acknowledge that Gannon has failed to file a brief in this appeal. However, the record in this case is short and the claimed errors are such that we can easily resolve this appeal without the aid of an appellee's brief. Consequently, we will address the merits of this appeal. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 20 We first address Rai's contention that the trial court erred by failing to admit into evidence an "Eviction Unit Worksheet" prepared by the Sheriff's Office of Cook County. Rai asserts that the document is admissible under the business-records exception to the rule against hearsay, or, in the alternative, as an admission by a party-opponent.

¶ 21 The admission of evidence is a matter left to the sound discretion of the trial court, and its resolution of such issues will not be disturbed on review absent an abuse of that discretion. *Roach v. Union Pacific R.R.*, 2014 IL App (1st) 132015, ¶ 19. An abuse of discretion occurs only when the trial court's ruling is arbitrary, fanciful, unreasonable, or when no reasonable person would adopt the trial court's view. *Id.* ¶ 20. Here, we find no abuse of discretion.

¶ 22 The record reveals that Rai sought to introduce the eviction unit worksheet to show that his personal belongings remained inside the premises after Gannon had the locks changed. The document, which is contained in the record on appeal, indicates that, on August 26, 2015, four Sheriff's deputies arrived at the premises to evict Rai. In the narrative section of document, the deputies noted that Gannon's two dogs were inside the premises and that Noose changed the lock near the "end of June [*sic*]." It also states that Noose told the deputies that "there were some belongings of [Rai] in the [premises]."

¶ 23 Rai argues that the eviction unit worksheet is admissible under the business-record exception to the hearsay rule. Illinois Rule of Evidence 803(6) (eff. Oct. 15, 2015), provides, in pertinent part, as follows:

> "A memorandum, report, record, or data compilation, in any form, of acts [or] events *** made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), unless the source of information or the method or circumstances of

> preparation indicate lack of trustworthiness ***." Ill. R. Evid. 803(6) (eff. Oct. 15, 2015).

¶ 24 For a proper foundation for the admission of business records, it is not necessary that the maker of the records testify or that the maker of the records be shown to be unavailable, nor is it necessary that the custodian of the records testify. *Raithel v. Dustcutter, Inc.*, 261 Ill. App. 3d 904, 909 (1994). It is necessary that someone familiar with the business and its mode of operation testify at trial as to the manner in which the record was prepared. *Id.* Anyone familiar with the business and its procedures may testify as to business records, and the original entrant need not be a witness; compliance with the foundation requirements provides the indicia of reliability necessary for admission of records. *People v. Morrow*, 256 Ill. App. 3d 392 (1993).

¶ 25 In this case, Rai initially sought to admit the eviction unit worksheet through the testimony of Noose. The eviction unit worksheet, however, was not prepared by Noose, but was rather a compilation of information gathered by the Sheriff's deputies who went to the premises to evict Rai. None of the Sheriff's deputies who assisted in preparing the eviction unit worksheet were called to testify. Thus, we agree with the trial court that Rai failed to lay a proper foundation through the testimony of Noose.

¶ 26 Rai also argued that he laid a proper foundation for the document because it was accompanied by certificate pursuant to Rule 902(11) of the Illinois Rules of Evidence (eff. Oct. 15, 2015). Rule 902(11) provides, in relevant part:

> "(11) Certified Records of Regularly Conducted Activity. The original or a duplicate of a record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written certification of its custodian or other qualified person that the record

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of these matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice." Ill. R. Evid. 902(11) (eff. Oct. 15, 2015).

¶ 27 Here, the eviction unit worksheet was accompanied by a "Records Affidavit" from Elizabeth Scannell of the Cook County Sheriff's Office. Scannell attested, *inter alia*, that the eviction unit worksheet was: (1) "made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters"; (2) "kept *** in the regular course of business"; and (3) that it is the "regular practice" of the Sheriff's Office for an employee "to make the record, or to transmit information thereof." In our view, Scannell's affidavit satisfied the requirements of Rule 903(11). As a consequence, assuming the eviction unit worksheet falls within the business-record exception to the hearsay rule, we agree with Rai that he established a proper foundation for the document.

¶ 28 Nevertheless, we find that the eviction unit worksheet cannot be admitted because the document contains double hearsay. In order to overcome the problem of double hearsay, (1) the document must be admissible in evidence (*Horace Mann Insurance Co. v. Brown*, 236 Ill. App. 3d 456, 463 (1992) (the document, a police report, must be admissible in evidence to overcome the hearsay problem presented by the document)), and (2) the information contained in the document must be admissible in evidence. *Babich v. River Oaks Toyota*, 377 Ill. App. 3d 425, 430 (2007). Here, the document contains Noose's out-of-court statements to the Sheriff's deputies and was offered to prove the truth of the matter asserted—namely that, Rai's personal belongings were in the premises. We further note that Noose specifically denied making any

statements to the Sheriff's deputies and also denied telling them that Rai's belongings were inside premises. Under these circumstances, we cannot say that the trial court abused its discretion in refusing to admit the document into evidence where the document contained double hearsay.

¶ 29 We also reject Rai's alternative contention that the eviction unit worksheet constituted non-hearsay as an admission by a party-opponent. Under Rule 801(d)(2)(D), "[a] statement is not hearsay if *** [t]he statement is offered against a party and is *** a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship ***." Ill. R. Evid. 801(d)(2)(D) (eff. Oct. 15, 2015). The rule simply requires that the statement be made by an individual who is an agent, that the statement be made during the period of the agency, and that the matter be within the subject matter of the agency.

¶ 30 Here, the statements contained in the eviction unit worksheet are from Noose, who testified that he is the chief engineer at the condominium. Rai never established that Noose, the declarant, was an agent of Gannon; that the statement was made about a matter over which Noose had actual or apparent authority; or, that Noose spoke by virtue of his authority as an agent. There is simply no basis for treating Noose's statements as an admission by a party-opponent. For the reasons stated, we conclude that the trial court did not abuse its discretion when it refused to admit the eviction unit worksheet into evidence.

¶ 31 We next address Rai's contention that the trial court erred in denying his petition for a rule to show cause. He asserts that Gannon should be held in contempt because the evidence established that he resorted to self-help and forcibly took possession of the premises by changing the locks in violation of section 9-101 of the Detainer Act (735 ILCS 5/9-101 (West 2014)) and

section 5-12-160(a) of the RLTO (Chicago Municipal Code § 5-12-160 (amended Nov. 6, 1991)).

¶ 32 Generally, civil contempt is designed to compel future compliance with a court order. *Felzak v. Hruby*, 226 Ill. 2d 382, 391 (2007). Civil contempt differs from criminal contempt, in that "[c]riminal contempt is retrospective in nature and consists of punishing for doing what has been prohibited or not doing what has been ordered" while "civil contempt is prospective in nature and is invoked to coerce what has been ordered." *People v. Budzynski*, 333 Ill. App. 3d 433, 438 (2002). "Contempt that occurs outside the presence of the court is classified as indirect contempt." *In re Marriage of Spent*, 342 Ill. App. 3d 643, 653 (2003). "The existence of an order of the court and proof of willful disobedience of that order are essential to any finding of indirect contempt." *Id.*

¶ 33 "Whether a party is guilty of contempt is a question of fact for the trial court, and its ruling will not be disturbed unless it is against the manifest weight of the evidence." *In re Marriage of Smithson*, 407 Ill. App. 3d 597, 607 (2011). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Best v. Best*, 223 Ill. 2d 342, 350 (2006). Under this standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses. *Id.* "A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Id.* at 350-51.

¶ 34 In this case, Gannon does not dispute that he had the lock to the premises changed on July 8, 2015. Thus, the issue is whether the trial court's conclusion that Rai was no longer in possession of the premises when Gannon ordered the locks changed is against the manifest

weight of the evidence. See *National Bank of Albany Park in Chicago v. S.N.H., Inc.*, 32 Ill. App. 3d 110, 118 (1975) (whether an individual intended to abandon possession the premises is a question of fact to be determined by the trial court).

¶ 35 Here, we are unable to conclude that the trial court's finding that Rai was no longer in possession of the premises when Gannon ordered the locks changed on July 8, 2015, is against the manifest weight of the evidence. The trial court noted that Rai scheduled a move-out date of July 7, 2015, hired a moving company, paid a $600 deposit, and reserved the freight elevator from 3 to 6 p.m. The court also noted that Rai voluntarily moved his belongings from the apartment and, through his own admission, moved into his family member's apartment on West Hubbard Street. Thus, Rai's testimony establishes that he and his family were no longer living in the apartment and, aside from residual items, he moved all of his family's belongings out of the apartment before the lock was changed. See generally *Perry v. Evanston Young Men's Christian Association*, 92 Ill. App. 3d 820, 825 (1981) (stating a forcible entry occurs when entry is against the will of the person in *actual* possession).

¶ 36 Moreover, Rai's testimony that he returned to the premises on July 7, 2015, and stayed the night is contradicted by the allegations in his petition, which alleged that he left the premises around midnight "to get a few hours of sleep." And, although Rai testified that his personal belongings remained in the premises, Noose stated that, after the locks were changed, he and the building manager went inside the premises with Rai, but Rai did not identify any items that belonged to him. As noted above, it is the duty of the trial court, as the finder of fact, to determine factual questions and resolve conflicting testimony. Thus, it was the trial court's prerogative to make credibility determination, decide the weight to be given to the evidence and the inferences to be drawn, and we will not disturb the court's decision on these matters. See

*Best*, 223 Ill. 2d at 350-351. Based upon the record before us, we are unable to conclude that the trial court's apparent rejection of Rai's testimony or its finding that Rai was no longer in possession of the premises when Gannon had the locks changed, was against the manifest weight of the evidence.

¶ 37 Accordingly, the trial court's determination that Gannon did not willfully disobey or violate section 9-101 of the Detainer Act or section 5-12-160 of the RLTO, based upon its finding that Rai was not in possession of the premises at the time Gannon ordered the locks changed on July 8, 2015, is not against the manifest weight of the evidence. We conclude, therefore, that the trial court did not err in denying Rai's petition for a rule to show cause, seeking to hold Gannon in indirect contempt of court.

¶ 38 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 39 Affirmed.