2016 IL App (2d) 151126-U
No. 2-15-1126
Order filed September 13, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MORNINGSIDE CRESCENT COURT CONDOMINIUM ASSOCIATION,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 15-LM-2177
BIDU NAYAK, PRADIP NAYAK, DAVID VEJCIK, NENETZIA ESPINOZA, and UNKNOWN OCCUPANTS,	)	
Defendants	)	
(Pradip Nayak, Defendant-Appellant).	)	Honorable Brian J. Diamond, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly imposed a fine pursuant to plaintiff's rules: plaintiff's enforcement of the rules authorizing the fine was not barred by waiver or estoppel, defendant had notice of the rules, and the amount of the fine was reasonably related to its purpose.

¶ 2 Defendant, Pradip Nayak, appeals *pro se* from the judgment of the circuit court of Du Page County imposing, among other things, a $1000 fine for violating rules related to

moving in and out of a property operated by plaintiff, Morningside Crescent Court Condominium Association (Association). Because the judgment imposing the fine was not against the manifest weight of the evidence, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The Association filed a complaint for forcible entry and detainer against defendants, Pradip Nayak, Bidu Nayak, David Vejcik, Nenetzia Espinoza, and unknown occupants.[1] Following a bench trial, the trial court entered judgment in favor of the Association, including a $1000 fine, costs, attorney fees, and possession.

¶ 5 The following facts were established at the trial. In 2005, pursuant to its declaration, the Association enacted rules and regulations, which, in pertinent part, limited moving in or out of a unit to certain weekday hours and required payment of a $250 damage deposit. The fines for violations of the moving rules were $50 for the first violation, $100 for the second, and $150 for the third.

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[1] Pradip and Bidu are husband and wife, respectively, and co-owners of the subject property, a condominium. Vejcik and Espinoza were tenants and are not parties to this appeal.

The Association contends that Bidu is not a party to this appeal, because she is not named as an appellant in the notice of appeal and neither she nor her attorney signed the notice of appeal. We agree. The notice of appeal filed by Pradip, although stating that the appellant is Pradip "et al," does not specify Bidu as an appellant and does not include either her signature or that of her attorney. Further, Bidu did not file a separate notice of appeal. Thus, she is not a party to this appeal. See *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 824 (2010) (citing Ill. S. Ct. R. 303(b)(4) (eff. May 30, 2008)). Accordingly, we will use the singular term "defendant" in referring to Pradip.

¶ 6 The rules regarding moving were changed in 2009. The 2009 amendment required an owner to give a 48-hour notice, provide a copy of the lease, and pay a $500 damage deposit. The 2009 amendment also increased the fine to $1000 for violating the moving rules. The fine was increased because the owners and tenants frequently violated the rules and were willing to pay the lower fines. According to Donald Shapiro, the property manager, the Association's goal in increasing the fine was to elicit compliance with the rules and thereby create a better "living environment and add to the value of the units." After the fine was increased, violations of the moving rules, which occurred regularly before 2009, decreased to an average of two per year.

¶ 7 The rules were amended again in 2012. The rules pertaining to moving, however, did not change.

¶ 8 The 2009 and 2012 rules were sent to all of the Association's members at the addresses on file. The Association also sent a letter in 2009 that explained the reasoning behind the increased fine.

¶ 9 However, the address on file for defendant was incorrect. According to Shapiro, defendant did not provide a correct address until June 2014. According to defendant, he never received the notice regarding either the 2009 or the 2012 rules changes. Shapiro testified that, in previous moves, defendant provided notice, supplied a copy of the lease, paid the deposit, and complied with the prescribed time frame.

¶ 10 On February 22, 2014, a Saturday, Vejcik and Espinoza moved into defendant's unit. Defendant did not give the required notice, provide a copy of the lease, or pay the damage deposit.

¶ 11 On March 15, 2014, the Association mailed defendant (using the incorrect address) a notice that the February 22, 2014, move had violated the rules and that defendant was subject to

a $4000 fine. The notice further advised that a hearing would be held on April 16, 2014. The notice was returned and the certification showed that it was not delivered. According to Shapiro, the Association also sent notice to defendant via e-mail and to his knowledge that was received.

¶ 12 Defendant admitted that he received the March 2014 email regarding the notice. It was then that he realized that the Association did not have his correct mailing address. According to defendant, in March 2014, he notified the Association of his correct address.

¶ 13 Defendant attended the April 16, 2014, hearing. The Association found that defendant, in the single incident, violated four of the moving rules, and it imposed a $4000 fine, $1000 for each of the four violations.

¶ 14 Because defendant did not pay the fine, on June 13, 2014, the Association mailed him a notice and demand letter. Although it used the incorrect address, defendant received from his tenants a copy that had been mailed to the unit. Defendant crossed off the incorrect address, wrote in the correct address, and sent it back to the Association.

¶ 15 According to Shapiro, once he learned of the incorrect address, he directed the Association's attorney to send a letter to defendant rescinding the fine. On October 27, 2014, the Association's attorney sent a letter that stated, in pertinent part, following "careful consideration of this matter by the Association's Board," the fine had been "rescinded by the Association and [would] be removed from [defendant's] account." The letter further stated that the Association was "extend[ing] an invitation to [defendant] to schedule a meeting with [the rules committee] *** to discuss the matters and issues that resulted in the above-referenced fines, charges and actions." The letter added, "please note that neither the Board's action in rescinding the referenced fines nor this letter [should] be construed as a waiver on the Board['s] part of the right to give notice and impose fines, and/or take action to collect same, with respect to violations of

the Association's Declaration, By-Laws or rules and regulations." Shapiro did not intend for the letter to waive the Association's right to pursue the previous violations or impose any fines.

¶ 16 On January 8, 2015, the Association sent defendant a letter notifying him that on January 14, 2015, the rules committee was going to hold a hearing regarding the previous violations of the rules. The letter was sent via certified mail and e-mail, and defendant admitted having received it.

¶ 17 Defendant did not attend the January 14, 2015, hearing. The Association reimposed the $4000 fine. On January 24, 2015, the Association sent defendant, via certified mail, a notice of the fine. The certification was signed by defendant, showing receipt of the letter.

¶ 18 According to Shapiro, defendant never paid the fine, and the Association authorized a collection action. On June 18, 2015, the Association's attorney sent defendant a notice and demand letter. Because defendant did not pay within 30 days, the Association filed this action.

¶ 19 Defendant submitted the rules from several area condominium associations. Those rules established fines for similar violations that were less than that of the Association.

¶ 20 In ruling, the trial court found that the provision of the rules pertaining to the fine was ambiguous as to whether a $1000 fine must be imposed for each rule violation, as opposed to one incident involving several rules. Therefore, the court reduced the fine to $1000. The court also awarded costs of $340, attorney fees of $1950, and possession to the Association. Defendant, in turn, filed a timely notice of appeal.

¶ 21 II. ANALYSIS

¶ 22 Defendant contends that: (1) the Association either waived its right to enforce the moving rules, or should be equitably estopped from doing so, because it rescinded its earlier imposition

of the fine; (2) the Association failed to notify him of the changes in the moving rules; and (3) the amount of the fine was not reasonable.

¶ 23 The Association responds that: (1) defendant's brief should be stricken because it violates several provisions of Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013); (2) the Association's rescission of the fine did not constitute a waiver of, or justify application of equitable estoppel to bar, its right to enforce the moving rules; (3) the Association sent notice as required by the rules, and even if it did not, defendant knew of the changes in the moving rules; and (4) the amount of the fine was reasonable.

¶ 24 We begin with the Association's request that we strike defendant's brief. Clearly, defendant's brief violates Rule 341(h) in several respects. For example, it does not contain a proper "[p]oints and [a]uthorities" section (Ill. S. Ct. R. 341(h)(1) (eff. Feb. 6, 2013)), a proper introductory paragraph (Ill. S. Ct. R. 341(h)(2) (eff. Feb. 6, 2013)), an adequate statement of the standard of review as to each issue (Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013)), an adequate statement of facts (Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013)), and an argument section that contains citations to the record and authority (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)). Although compliance with Rule 341 is mandatory, we have wide discretion as to whether to strike an appellant's brief and dismiss an appeal for violating the rule. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77. We typically will not do so where a lack of compliance does not hinder our review. *In re Marriage of Levinson*, 2013 IL App (1st) 121696, ¶ 26. Because defendant's failure to comply with Rule 341(h) does not hinder our review, we deny the Association's request to strike defendant's brief.

¶ 25 Turning to the merits, we first address defendant's contention that the Association waived its right to enforce the moving rules against him. Waiver is the voluntary and intentional

relinquishment of a known right. *In re Nitz*, 317 Ill. App. 3d 119, 130 (2000). Waiver can be either expressed or implied by conduct inconsistent with the intent to enforce the particular right. *In re Nitz*, 317 Ill. App. 3d at 130. A party claiming an implied waiver must prove a clear, unequivocal, and decisive act by its opponent that manifests the intent to waive the right. *In re Nitz*, 317 Ill. App. 3d at 130. Parties to a contract have the power to waive beneficial provisions, and such waiver may be established by conduct indicating that strict compliance with the contract will not be required. *In re Nitz*, 317 Ill. App. 3d at 130. A trial court's finding as to whether a party has waived a right will not be disturbed unless that decision is against the manifest weight of the evidence. *In re Nitz*, 317 Ill. App. 3d at 131.

¶ 26 Here, in support of the waiver argument, defendant relies exclusively on the letter from the Association's attorney, which stated that the Association was rescinding the previously imposed fine. The letter alone, however, did not constitute a clear, unequivocal, and decisive expression of the Association's intent to abandon its right to enforce the moving rules. Rather, it merely indicated that the Association was opting not to enforce its original imposition of the fine. Further, the letter invited defendant to meet with the rules committee to discuss "the matters and issues that resulted in" the fine. That language, as opposed to indicating the intent to waive the right to enforce the moving rules, clearly stated the intent to enforce the rules as they related to the recent violation. More importantly, the letter noted that the Association's rescission of its original action was not to be construed "as a waiver." Because there was no evidence of a waiver, the trial court's ruling in that regard was not against the manifest weight of the evidence.

¶ 27 We next address defendant's contention that the Association should be equitably estopped from enforcing the moving rules, because it rescinded its original enforcement. To establish equitable estoppel, a party must prove that: (1) the other party misrepresented a

material fact; (2) the other party knew when it made the misrepresentation that it was false; (3) the party claiming estoppel did not know that the misrepresentation was false; (4) the other party intended or reasonably expected that the party claiming estoppel would act upon the misrepresentation; (5) the party claiming estoppel reasonably relied upon the misrepresentation in good faith to its detriment; and (6) the party claiming estoppel would be prejudiced by its reliance if the other party were permitted to deny the truth thereof. *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 313-14 (2001). A trial court's ruling on equitable estoppel is reviewed under the manifest-weight-of-the-evidence standard. *Morgan Place of Chicago v. City of Chicago*, 2012 IL App (1st) 091240, ¶ 33.

¶ 28 In this case, defendant failed to establish a basis to invoke equitable estoppel. There was no proof that the Association misrepresented any material fact, that defendant relied upon any such misrepresentation, or that defendant was prejudiced by any such reliance. Nor can the language of the letter reasonably be construed as a misrepresentation or concealment of a material fact. Therefore, to the extent that the trial court considered and rejected equitable estoppel, that ruling was not against the manifest weight of the evidence.

¶ 29 Next, we address defendant's contention that the Association never notified him of the changes in the moving rules. Although it was disputed as to whether defendant ever received any of the mailed notices, it was undisputed that in prior moves defendant had complied with the 2009 moving rules, including providing the 48-hour notice, paying the $500 damage deposit, and supplying a copy of the lease. Defendant's prior compliance shows that he knew of the 2009 changes to the moving rules. Because defendant knew of the moving requirements, any lack of mailed notice did not prejudice him.

¶ 30 That leaves defendant's assertion that the fine was not reasonable. A condominium association may enact and amend rules and regulations covering the details of the operation and use of the property. *Board of Directors of 175 East Delaware Place Homeowners Ass'n v. Hinojosa*, 287 Ill. App. 3d 886, 890 (1997) (citing 765 ILCS 605/18.4(h) (West 1994)). The rules and regulations govern the requirements of daily living in the association. *Hinojosa*, 287 Ill. App. 3d at 891. Such rules must be objective, evenhanded, nondiscriminatory, and applied uniformly. *Hinojosa*, 287 Ill. App. 3d at 891. A court will carefully scrutinize such rules to determine if they are reasonable in their purpose and application. *Hinojosa*, 287 Ill. App. 3d at 892.

¶ 31 In this case, defendant does not challenge the reasonableness of having a fine. Rather, he contends that the amount was not reasonable.[2]

¶ 32 The undisputed evidence established that the Association had imposed previously a system of progressive fines, providing for a $50 fine for a first violation, $100 fine for a second, and $150 fine for a third. According to the property manager, Shapiro, that system failed to deter violations, as owners would routinely violate the moving rules and willingly incur the lower fines. He explained that the purpose of the rules was to create a better living environment and increase property values. Given the goals behind the rules, and the persistent lack of compliance with the moving rules in the face of the lesser fines, it was certainly reasonable for the Association to increase the fine to an amount that effectuated compliance with the rules. Indeed, after the fine was increased, the number of violations decreased to an average of two per year.

[2] We note that the trial court reduced the fine from $4000 to $1000, because it construed the rules as not clearly allowing for the imposition of multiple fines for a single incident. The Association does not challenge that ruling, and thus we offer no opinion in that regard.

Although the fine might have been lower and still been equally effective, defendant failed to show at what lower level the fine would have accomplished its intended purpose.

¶ 33 In an effort to show that the fine was excessive, defendant submitted the rules of several area condominium associations that imposed lesser fines for moving violations. That evidence alone, however, did not show that the Association's determination of an appropriate fine was unreasonable. For instance, the level of compliance in those other associations might have been satisfactory with lesser fines, or those associations might not have placed the same degree of importance on compliance with their moving rules. Therefore, the rules from other associations, without more, did not establish that the amount of the Association's fine was unreasonable. Thus, the trial court's imposition of the $1,000 fine was not against the manifest weight of the evidence. See *Auto-Owners Insurance Co. v. Konow*, 2016 IL App (2d) 150860, ¶ 11 (judgment following bench trial is reversed only if against manifest weight of the evidence).

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 36 Affirmed.