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FIRST DIVISION
February 21, 2017

No. 1-16-1383
2017 IL App (1st) 161383-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

COLIN DEW-BECKER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 16 M1 011598
)	
ANDREW WU,)	Honorable
)	Leon Wool,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred when it entered judgment for defendant after trial without affording plaintiff an opportunity to be heard; reversed and remanded.
- ¶ 2 Plaintiff, Colin Dew-Becker, appeals the trial court's order that entered judgment in favor of defendant, Andrew Wu. Dew-Becker argues that the court below erred in failing to conduct a trial, its judgment was against the manifest weight of the evidence, and the basis for dismissal was erroneous. Our review of the record in this case shows that Dew-Becker was never afforded an opportunity to present evidence or argument to the trial court. Essentially, the court below failed to conduct a trial. As a result, we reverse the decision of the trial court and remand for further proceedings consistent with this order.

¶ 3

BACKGROUND

¶ 4 This case stems from a \$100 bet placed between Dew-Becker and Wu through the fantasy sports website FanDuel. According to Dew-Becker's *pro se* complaint, which was filed on April 4, 2016, he brought a statutory cause of action pursuant to section 28-8 of the Criminal Code (Code) (720 ILCS 5/28-8 (West 2014)), after he sustained a monetary loss of \$100 as a result of a wager with Wu that was placed just three days earlier on April 1, 2016. Dew-Becker's complaint alleged that he and Wu engaged in a head-to-head Daily Fantasy Sports (DFS) contest through FanDuel's website, with Dew-Becker and Wu each wagering \$100 on the outcome of the contest for the opportunity to win \$100 from the other. Dew-Becker further alleged that this act of wagering was an act of gambling as defined in section 28-1 of the Code. See 720 ILCS 5/28-1 (West 2014) ("A person commits gambling when he or she plays a game of chance or skill for money or other thing of value, unless excepted in subsection (b) of this Section.")

¶ 5 Dew-Becker's complaint alleged that he and Wu each paid \$109 to FanDuel, for a total of \$218. FanDuel received \$18 as a fee, and the total prize for the DFS contest was \$200. Dew-Becker and Wu each chose their DFS roster by selecting various NBA players. At the conclusion of the contest, Dew-Becker, who played under the name "dewbeckc," scored 96.30 points, and Wu, who played under the name "questionablylegal," scored 221.10. As a result of scoring the highest total points, Wu won the \$200 prize.

¶ 6 Dew-Becker's complaint recognized that Illinois courts have yet to address whether participating in DFS contests is considered gambling, but argued that DFS should be considered as such. Dew-Becker further alleged that because Wu was the winner of the wager and he was the loser, he had the right to recover the \$100 he lost from Wu pursuant to section 28-8 of the Code.

¶ 7 On May 4, 2016, the parties appeared before the trial court for the first and only time. The record contains an order that indicates that judgment for Wu was entered after a trial. The record does not contain a transcript or report of proceedings. However, the parties filed a stipulated bystander's report on June 1, 2016. In relevant part, the bystander's report stated as follows:

"THE COURT (to Mr. Wu): What is your position on FanDuel?

MR. WU: How do you mean?

THE COURT: What is your association with Fan Duel? Are you employed by them?

MR. WU: No, I have no association with them, I'm not a FanDuel employee.

THE COURT (to Mr. Dew-Becker): And are you employed by FanDuel?

MR. DEW-BECKER: I'm not employed by FanDuel, I have no association with them.

THE COURT (to Mr. Dew-Becker): What is your general theory for this case?

MR. DEW-BECKER: That Mr. Wu and I wagered \$100 on the outcome of our DFS contest on April 1, that I lost that wager, and that I have the right to recover my loss.

THE COURT (to Mr. Wu): And what is your theory on this case?

MR. WU: That we participated in a skilled contest, and I received a prize from FanDuel.

THE COURT: Alright, take a seat as I review the case.

(The judge leaves the courtroom for 10 minutes and then returns.)

THE COURT (to Mr. Dew-Becker): It seems to me that in order to make this claim, you would need to bring an action against FanDuel.

MR. DEW-BECKER: Even though Mr. Wu and I are the ones who risked the money?

THE COURT: Yes, Judgment for the Defendant: Not Guilty. See the clerk for the court order.

MR. DEW-BECKER: Thank you, your Honor."

¶ 8 Dew-Becker filed his timely notice of appeal on May 18, 2016, and subsequently filed his appellate brief on August 19, 2016. Wu's response brief was due on September 23, 2016, but because Wu never filed a brief by that date or sought an extension of time to do so, on January 26, 2017, this court ordered that this case be taken on Dew-Becker's brief and the record on appeal only. Additionally, Dew-Becker requested that FanDuel be invited to file an amicus brief, which this court allowed. However, FanDuel did not accept said invitation.

¶ 9 ANALYSIS

¶ 10 Dew-Becker¹ presents three arguments on appeal: the trial court failed to conduct a trial, the court's judgment was contrary to the manifest weight of the evidence, and the trial court's basis for dismissal was erroneous. We need only address Dew-Becker's first argument because we agree with his contention that the trial court failed to conduct a trial. Finding that dispositive, we reverse and remand for further proceedings.

¶ 11 We find it pertinent to first address Dew-Becker's assertion that although the amount in question in this case is only \$100, this case does not fall under our supreme court rules for small claims cases. According to Rule 281, "For the purpose of the application of Rules 281 through 288, a small claim is a civil action based on either tort or contract for money not in excess of

¹ Although Dew-Becker proceeded *pro se* before the trial court, he is now represented by counsel on appeal.

\$10,000." Ill. S. Ct. R. 281 (eff. Jan. 1, 2006). This case, which is brought as a statutory cause of action, is neither based on tort nor contract. As a result, the rules regarding small claims do not apply to this case. Specifically, Rule 286(b), which provides for informal hearings in small claims cases, does not apply. Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992) ("In any small claims case, the court may, on its own motion or on motion of any party, adjudicate the dispute at an informal hearing.")

¶ 12 Dew-Becker argues that the trial court failed to conduct a trial. For support, he points to the case of *Eckel v. Macneal*, 256 Ill. App. 3d 292, 296-97 (1993), where the court held, "under constitutional norms of due process, an eviction trial, like any other civil trial, should be an orderly procedure wherein the plaintiff presents evidence of possession and compliance with the necessary procedural steps for notice of termination, filing suit, and summons." Although we do not believe that this forcible entry and detainer case is directly applicable here, constitutional norms of due process are nonetheless pertinent.

¶ 13 "Procedural due process claims concern the constitutionality of the specific procedures employed to deny a person's life, liberty, or property interest." *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 244 (2006). "The requirement of due process is met by having an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights." *Id.*

¶ 14 Here, it is clear from the stipulated bystander's report that Dew-Becker was never afforded an opportunity to be heard. Specifically, he was not afforded the chance to present testimony or argument. Rather, the court only asked for each party's "theory of the case," which consisted of a one sentence answer. After leaving the courtroom for 10 minutes, the court returned with the conclusion that judgment should be entered for Wu, after finding that Dew-

Becker was required to have sued FanDuel, not Wu. It is clear that the proceeding conducted by the trial court did not comport with due process. As such, we reverse the decision of the trial court and remand for further proceedings consistent with this order.

¶ 15

CONCLUSION

¶ 16 Based on the foregoing, we find that the trial court erred when it failed to conduct a trial.

¶ 17 Reversed and remanded.