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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

GREGORY LOVEJOY,)	
)	Appeal from the Circuit Court
Plaintiff-Appellant,)	of Cook County.
)	
v.)	No. 15 M6 11013
)	
EMMANUEL MENSAH,)	The Honorable
)	Carl B. Boyd,
Defendant-Appellee.)	Judge Presiding.
)	
)	

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* Where the trial court denied defendant's motion to reconsider and where defendant has not provided the appellate court with a sufficiently complete record of the trial proceedings to support his claim of error, it must be presumed that the denial of the motion to reconsider was in conformity with the law and had a sufficient factual basis.

¶ 2 Plaintiff, Gregory Lovejoy, brought a forcible entry and detainer action against defendant, Emmanuel Mensah, alleging in his complaint that defendant had failed to pay the

purchase price of \$65,000 for the property.¹ After a default order of possession was entered against defendant, defendant filed a motion to vacate, which was treated as a motion to reconsider and denied by the trial court. Defendant appeals *pro se*, claiming that the trial court erred in denying the motion to reconsider because plaintiff had fraudulently procured the order of possession. We affirm.

¶ 3

BACKGROUND

¶ 4

On December 7, 2015, plaintiff filed a forcible entry and detainer action to evict defendant for “failure to pay the purchase price of \$65,000” for a house in Markham, Illinois, in which defendant was living. In his brief on appeal, defendant claims that he moved in with his girlfriend in May 2012 to care for her after she was diagnosed with cancer. During this time, defendant claims his girlfriend told him she was “giving” the house to him, drew up paperwork, and also verbally informed a mutual friend that she was giving the house to defendant. Defendant’s girlfriend passed away in September 2014 and defendant continued to reside at the house. Defendant claims that in June 2015, a man and woman came to the house and told defendant he needed to pay \$65,000 for the house. When defendant asked for “the documents of the property,” the man or woman told him they did not have the documents and that the property belonged to plaintiff, a relative of defendant’s late girlfriend. Defendant claims that when he asked plaintiff whether he needed to pay these individuals, plaintiff told him that he had not sent anyone to collect money and that if defendant paid them he did so at his own risk. Defendant claims in his brief that he called the police after speaking with plaintiff and had the man and woman removed from the property. In December 2015, defendant received a pre-suit notice. Defendant claims that when he asked

¹ The record does not reveal a real estate contract for \$65,000.00.

plaintiff about the lawsuit, plaintiff told him that he had not hired an attorney or brought an action against defendant. However, the record reveals that the plaintiff is bringing the lawsuit and that he was represented by an attorney.

¶ 5 On February 25, 2016, defendant did not appear on the scheduled trial date. A default judgment was subsequently entered against him, awarding plaintiff possession of the property. Defendant filed a motion to vacate the order of possession claiming he had not been properly served with process. The trial court granted defendant's motion on March 22, 2016, and vacated the February 2016 default order of possession and quashed service of process. Additionally, the court dismissed plaintiff's cause of action for want of prosecution because plaintiff failed to appear at the hearing.² On May 5, 2016, plaintiff filed a motion to "quash" the notice of motion and the March 22, 2016, order to vacate,³ arguing he had not received notice of the March 22, 2016, hearing. The trial court granted the motion to "quash" the notice of motion on May 19, 2016, and vacated the March 22, 2016, order. A hearing on defendant's motion to vacate the order for possession, which was then treated as a motion to reconsider,⁴ was scheduled for May 31, 2016. Both parties appeared at this hearing through counsel and presented their arguments, after which the trial court denied defendant's motion to reconsider. On June 17, 2016, plaintiff filed a motion to "extend" enforcement of the order for possession, which alleged that the sheriff's office would be unable to serve the order of possession prior to the expiration of the February 25, 2016, order because of defendant's postjudgment motions. The record does not contain a disposition of this motion. Defendant filed a notice of appeal for the order of possession on June 20, 2016.

² The record does not disclose under which section the trial court dismissed plaintiff's cause of action.

³ Plaintiff's motion to "quash" the March 22, 2016 order was treated as a motion to vacate

⁴ The record does not explain why the motion to vacate was recharacterized as a motion to reconsider.

¶ 6

ANALYSIS

¶ 7

On appeal, defendant argues the trial court erred in denying his motion to reconsider because plaintiff's forcible entry and detainer action was based on fraud, and asks us to dismiss the action. We take this case for consideration on the basis of defendant's brief and the record because plaintiff failed to file a responsive brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (holding that a reviewing court can decide the merits of the appeal if the record is simple and the claimed errors can be easily decided without the aid of an appellee's brief). For the following reasons, we affirm.

¶ 8

I. Jurisdiction

¶ 9

As an initial matter, we must determine whether this court has jurisdiction to hear the instant appeal. Even if neither party raises the issue of jurisdiction, an appellate court has an independent duty to consider whether or not it has jurisdiction to hear an appeal. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). The question of whether we have jurisdiction is a question of law, which we review *de novo*. *People v. Shinaul*, 2017 IL 120162, ¶ 8. *De novo* consideration means that we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 10

Jurisdiction arises in the appellate court when a party files a timely notice of appeal from a final order or an order that allows a permissive interlocutory appeal. *Huber v. American Accounting Ass's*, 2014 IL 117293, ¶¶ 8. An appeal is timely when it is filed within 30 days of the final judgment that is being appealed from, or within 30 days after the entry of the order disposing of the last pending postjudgment motion. *Huber*, 2014 IL 117293, ¶¶ 8-9; Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015). If there are postjudgment motions pending at the time

the notice of appeal is filed, appellate jurisdiction is tolled until the time the last postjudgment motion is decided. *A.M. Realty Western L.L.C. v. MSMC Realty, L.L.C.*, 2016 IL App (1st) 151087, ¶ 78; Ill. S. Ct. R. 303(a)(2) (eff. Jan. 1, 2015).

¶ 11 In this case, the trial court entered an order of possession against defendant on February 25, 2016. This order determined the merits of the claim, and acted as a final judgment for purposes of appeal. Defendant’s motion to reconsider was subsequently denied on May 31, 2016, and he filed a timely notice of appeal on June 20, 2016, conferring appellate jurisdiction to this court. As we have observed, a notice of appeal does not confer jurisdiction upon the appellate court until the last postjudgment motion is decided. In the case at bar, plaintiff’s motion to “extend” the order for possession was filed on June 17, 2016, before the notice of appeal was filed, and the record filed in the appellate court does not disclose that the trial court made a ruling on this motion. However, plaintiff’s motion to “extend” merely related to the execution of the judgment and was in effect a motion to stay the proceedings. The motion was a collateral or incidental matter that did not challenge the February 25, 2016, judgment or alter the issue from which defendant filed his notice of appeal. See *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 526 (2001) (finding that “[a] stay of judgment is collateral to the judgment and does not affect or alter the issue on appeal”). The motion to “extend” was therefore not a postjudgment motion for purposes of tolling the time for appellate review. *Moening v. Union Pacific R. Co.*, 2012 IL App (1st) 101866, ¶ 35; *James v. Lifeline Mobile Medics*, 341 Ill. App. 3d 451, 455 (2003); see also *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 174-75 (2011) (holding that the circuit court retained jurisdiction to award judgment interest after the notice of appeal was filed because the award was collateral to the judgment

and did not alter the substantive issues on appeal). Accordingly, we conclude that we have jurisdiction to hear this case on appeal.

¶ 12

II. Motion to Reconsider

¶ 13

On appeal, defendant claims that the trial court wrongfully denied his motion to reconsider the order of possession, and asks this court to dismiss plaintiff's cause of action due to fraud by plaintiff. We cannot dismiss plaintiff's cause of action because we are a reviewing court and can only review the actions of the trial court. *Board of Ed. Of City of Chicago v. Chicago Teachers Union, Local 1*, 26 Ill. App. 3d 806, 813 (1975) (citing *Sprague v. Goodrich*, 376 Ill. 80, 86 (1941); *Pepper Construction Co. v. Palmolive Tower Condominiums, LLC*, 2016 IL App (1st) 142754, ¶ 81. We can, however, reverse the judgment order of the trial court. However, we are unable to do so because defendant has not provided this court with a sufficient record to make such a determination.

¶ 14

It is within the trial court's sound discretion whether to grant a motion to reconsider. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 347 (2002). Generally, a reviewing court will not reverse a trial court's decision to grant or deny a motion to reconsider absent an abuse of discretion. *Robidoux*, 201 Ill. 2d at 347. "An abuse of discretion occurs when no reasonable person would take the view adopted by the court." *Trettenero v. Police Pension Fund*, 333 Ill. App. 3d 792, 801 (2002) (citing *In re Marriage of Blunda*, 299 Ill. App. 3d 855, 865 (1998)).

¶ 15

In the case at bar, it is impossible for us to determine whether the trial court abused its discretion in denying defendant's motion to reconsider because there is no transcript of the hearing on the motion or any hearing that occurred at the time of the entry of the default, nor is there a bystander's report. On appeal, it is an appellant's burden to present a sufficiently

complete record of the trial proceedings to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984) (citing *Chicago City Bank & Trust Co. v. Wilson*, 86 Ill. App. 3d, 452, 454 (1980)). If no such record is provided, "it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 391. This is so because in order to determine whether there was in fact an error, the appellate court must have the record to review before it. *Fouch*, 99 Ill. 2d at 391.

¶ 16 In the case at bar, all that appears before us is the complaint, the various motions filed by the parties, and the trial court orders. Defendant has provided this court with no transcript of the hearing on the motion to reconsider, and the trial court's order denying the motion did not state specific grounds for the denial. The order simply states that the parties appeared through counsel and that the court, after hearing arguments of counsel and being advised in the premises, ordered that "the motion to vacate order for possession (renamed motion to reconsider) [be] denied." If no transcript is available, Supreme Court Rule 323(c) (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)) provides that an appellant may prepare a bystander's report in place of a transcript and have it certified by the trial court. However, defendant has also not provided this court with a bystander's report.

¶ 17 Additionally, the motion to reconsider does not appear in the record, so we do not know whether the issue of fraud was properly raised before the trial court. In his appellate brief, defendant claims the trial court found that plaintiff acted fraudulently in bringing the action against him. However, as we have noted, the trial court's order denying the motion did not state specific grounds for the denial, including any alleged fraud by plaintiff. We also note that while defendant is *pro se* on appeal, he was represented by counsel at the hearing on the motion to reconsider.

¶ 18 Without a transcript or bystander's report to show any alleged error, we can have no basis for finding that the trial court abused its discretion in denying the motion to reconsider. *Foutch*, 99 Ill. 2d at 392. Accordingly, it must be presumed that the denial of the motion was in conformity with the law and had a sufficient factual basis.

¶ 19 CONCLUSION

¶ 20 The trial court's denial of defendant's motion to reconsider is affirmed where defendant has not provided a sufficiently complete record of the trial proceedings to support his claim that the trial court erred in its denial of his motion to reconsider.

¶ 21 Affirmed.