

2017 IL App (2d) 151231-U  
No. 2-15-1231  
Order filed January 18, 2017

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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FREEMONT JUNCTION CONDOMINIUM ASSOCIATION,	)	Appeal from the Circuit Court of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 15-LM-273
	)	
KENNETH S. PEISKER,	)	Honorable
	)	Brian J. Diamond,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices Hutchinson and Zenoff concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's judgment for plaintiff on its forcible-entry complaint was proper: defendant's jury demand was late without good cause and thus properly denied; the evidence showed that plaintiff had standing; plaintiff's late filing of its affidavit of service did not invalidate the service; and the conduct of the trial afforded defendant due process.

¶ 2 Defendant, Kenneth S. Peisker, appeals *pro se* from the judgment of the circuit court of Du Page County in favor of plaintiff, Freemont Junction Condominium Association, in its forcible entry and detainer action. Because defendant has not identified any basis for disturbing the judgment, we affirm.

¶ 3

## I. BACKGROUND

¶ 4 Plaintiff filed a complaint in forcible entry and detainer, seeking a money judgment for unpaid assessments and possession of defendant's condominium. On April 2, 2015, plaintiff served defendant with a summons and complaint. The summons required defendant to appear on April 30, 2015.

¶ 5 On April 30, 2015, the trial court entered a default judgment. Also on April 30, 2015, defendant filed *pro se* a sworn application to proceed as an indigent party, in which he asserted that he owned no real estate. On that same date, the court granted defendant's motion to proceed as an indigent.

¶ 6 On May 15, 2015, defendant filed a motion to vacate the default judgment, to quash service of the summons, and to dismiss the action with prejudice. Defendant contended, among other things, that plaintiff failed to file an affidavit of service three days before April 30, 2015, as required by the summons.

¶ 7 On June 15, 2015, the trial court granted defendant's motion to vacate the default judgment. The court denied that part of the motion that sought to quash service and dismiss the action. The court set the matter for a June 24, 2015, trial.

¶ 8 On June 19, 2015, defendant filed his appearance, a jury demand, and an answer. In his answer, defendant raised nine affirmative defenses, including that plaintiff lacked the capacity to sue. Defendant did not serve plaintiff with his answer until the day of trial.

¶ 9 On June 24, 2015, the trial court conducted a bench trial. Defendant objected, seeking to have a jury trial. When the court pointed out that defendant had filed his jury demand late, as the summons required him to appear on April 30, 2015, defendant responded that he had filed it at the same time that he filed his appearance. The court explained that, because the jury demand

was late, defendant must show good cause, a lack of inconvenience to plaintiff and the court, and a lack of prejudice to plaintiff. The court added that there were no potential jurors available. After noting that defendant had not sought leave to file a late jury demand, the court found that defendant had not shown good cause for filing a late jury demand or shown why it was not inconvenient to plaintiff or the court. Thus, the court denied plaintiff a jury trial.

¶ 10 Plaintiff then objected to having received defendant's answer, including the affirmative defenses, on the day of trial. The trial court, after stating that it would not rule pretrial on the affirmative defenses, told defendant that he could present his defenses during the trial and cross-examine any witnesses.

¶ 11 At that point, the bailiff apparently moved close to defendant, and defendant asked the trial court if it had ordered the bailiff to do so. The court responded that the bailiff was in charge of courtroom security and could go "wherever she wishes in the courtroom." After defendant stated that that made him a little nervous, the court commented that it was sorry if defendant was nervous but many people are nervous in court.

¶ 12 Mary Lynne Gaedele, plaintiff's sole witness, testified that she was a property manager for Lieberman Management Services. As part of her duties, she managed property for plaintiff. Plaintiff was a not-for-profit corporation subject to the provisions of the Condominium Property Act (765 ILCS 605/1 *et seq.* (West 2014)).

¶ 13 According to Gaedele, defendant owned a unit controlled by plaintiff. Property owners were required to pay regular monthly assessments plus special assessments for the period from August 1, 2006, to July 31, 2016. Defendant stopped paying the assessments in May 2014. Gaedele identified a ledger showing that defendant owed \$3,123.04 in past-due assessments, attorney fees, and costs.

¶ 14 When plaintiff moved to admit a 30-day notice and the ledger, defendant objected, contending that plaintiff lacked standing to sue him, because the former association had been dissolved and there was no notice regarding plaintiff becoming the new association. The trial court denied defendant's objection.

¶ 15 When plaintiff asked leave to submit its affidavit in support of attorney fees, defendant objected, arguing that he was being denied due process, because the trial court was not considering his affirmative defenses. The court responded that it was defendant's responsibility to present his defenses. The court admitted plaintiff's affidavit subject to cross-examination.

¶ 16 Defendant then testified on his own behalf. The trial court asked defendant what he wanted to say about his affirmative defense that plaintiff lacked standing. Defendant stated that, because the original association had been dissolved and never assigned or transferred to plaintiff its interest in the declaration and bylaws, plaintiff lacked the legal right to collect the assessments or to sue for possession of his unit.

¶ 17 In response, plaintiff's counsel stated that on November 4, 2004, a restatement of the declaration had been recorded with the Du Page County recorder. Plaintiff's counsel showed the trial court a "PDF copy" of the recording and asked the court to take judicial notice "of the document recorded as R2004-282238." Counsel argued that defendant had waived his standing contention, because he had, until May 2014, paid plaintiff the assessments without objection.

¶ 18 When the trial court asked defendant if he wished to raise anything else in his defense, defendant reiterated his standing argument and contended that he had never received notice of any transfer of the declaration and bylaws. Defendant added that he thought that he had been making the assessment payments to the original association. When the court asked defendant again if he had any other defenses, including whether he had actually paid the assessments that

had been claimed as past-due, he stated that he had made a payment of \$1,385.28 on April 29, 2015, but that he still owed a portion. The record showed that defendant still owed \$2,389.12.

¶ 19 The trial court again asked defendant if he had “[a]nything else [he] wish[ed] to tell the court.” Defendant said that he would like leave to amend his “affirmative defense into counterclaims and third-party claims” against the board members. Because it was in the middle of the trial and the claims involved “collateral matters \*\*\* not germane” to the trial, the court denied defendant’s request.

¶ 20 Defendant then cross-examined Gaedele. After the trial court sustained several of plaintiff’s objections, including when defendant asked Gaedele who the board members were, defendant commented that it seemed like he was “being held to the full extent of the law” and that his defenses were not “being held in this kind of regard.” The court responded that it had considered the defenses and was required to apply the law. The court described itself as an umpire who calls balls and strikes and that it could not coach defendant or be his lawyer. The court explained that all it was interested in was whether defendant had any other evidence germane to the issues in the case. When defendant stated that it just did not seem right that he could not find out who the board members were, the court responded that that was not germane to the trial issues and that defendant would need to obtain that information at another time.

¶ 21 The trial court found that plaintiff had met its burden. The court noted that it had considered all relevant filings and entered judgment for plaintiff.

¶ 22 Defendant filed a motion to reconsider. Following a hearing, the trial court denied defendant’s motion to reconsider. Defendant then filed a timely notice of appeal.<sup>1</sup>

¶ 23

## II. ANALYSIS

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<sup>1</sup> Plaintiff filed a motion to dismiss the appeal as untimely, and we denied that motion.

¶ 24 On appeal, defendant contends that: (1) the trial court erred in not honoring his timely jury demand; (2) the court erred in not finding that plaintiff lacked standing or the capacity to sue; (3) the court erred in allowing plaintiff to proceed without having filed its affidavit of service before the April 30, 2015, hearing, and (4) he was denied due process when the court threatened, intimidated, and bullied him during the trial.

¶ 25 We first address the issue regarding defendant's jury demand. In a forcible entry and detainer action, a defendant is required to file his jury demand by the time the summons required him to appear. *First Bank of Oak Park v. Carswell*, 111 Ill. App. 3d 71, 73 (1982).

¶ 26 In this case, the summons required defendant to appear on April 30, 2015. Defendant, however, did not file his jury demand until June 19, 2015. Thus, his jury demand was late.

¶ 27 Where a jury demand is late, a defendant has the burden of showing that there was good cause for the late filing. *Carswell*, 111 Ill. App. 3d at 73. Misapprehension of the facts, mistake, and inadvertence do not constitute good cause for filing a late jury demand. *Carswell*, 111 Ill. App. 3d at 74. Here, defendant failed to identify any good cause for the late filing of his jury demand.

¶ 28 In seeking to excuse a late jury demand, a defendant must also demonstrate the absence of any inconvenience to the plaintiff and the court and the absence of any prejudice to the plaintiff. *Carswell*, 111 Ill. App. 3d at 75. Here, defendant failed to demonstrate the lack of any inconvenience or prejudice to plaintiff. As for the lack of inconvenience to the court, the court found that the late jury demand would inconvenience the court, as it had scheduled and prepared for a bench trial and there were insufficient potential jurors available. Therefore, the court denied defendant a jury trial. That denial was a reasonable exercise of its discretion. See *Carswell*, 111 Ill. App. 3d at 75.

¶ 29 Defendant argues in his reply brief that *Carswell* violates his right to a jury trial as guaranteed by the Illinois Constitution. Ill. Const. 1970, art. I, § 13. Defendant forfeited that argument by raising it for the first time in his reply brief.<sup>2</sup> See *Negron v. City of Chicago*, 2016 IL App (1st) 143432, ¶ 25 (citing Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)). Even if the argument were not forfeited, it lacks merit. Placing a reasonable time restriction on a jury demand did not deny defendant his right to a jury trial. See *Hudson v. Leverenz*, 10 Ill. 2d 87, 92-93 (1956).

¶ 30 We next address defendant's contention that plaintiff lacked standing to sue. Defendant maintains that plaintiff was not authorized to file suit, because it had not yet been incorporated on November 4, 2004, the date when the restated declaration of covenants was transferred.

¶ 31 Defendant's argument ignores the evidence that plaintiff existed upon the recording of the declaration on November 4, 2004. See 765 ILCS 605/3 (West 2004). The trial court could take judicial notice of that recording. See *Village of Riverwoods v. BG Limited Partnership*, 276 Ill. App. 3d 720, 724 (1995) (judicial notice is proper when the document in question is part of the public record and when such notice aids in the efficient disposition of the case); see also *Muslim Community Center v. Village of Morton Grove*, 392 Ill. App. 3d 355, 359 (2009) (court may take judicial notice of public documents that are capable of being readily verified). Therefore, plaintiff established that it had the capacity to collect the assessments and file suit as of November 4, 2004.

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<sup>2</sup> Although defendant stated in one sentence in his opening brief that he was denied his constitutional right to a jury trial, that barebones contention neither referred to *Carswell* nor was otherwise supported by any authority. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (points in opening brief not argued are waived).

¶ 32 Next, defendant contends that plaintiff's failure to file an affidavit of service three days before the April 30, 2015, hearing invalidated the service. We disagree. Illinois Supreme Court Rule 102(d) (eff. Jan. 1, 1967) provides, in pertinent part, that the failure to return the summons or file proof of service does not invalidate the summons or the service. See *Wojtowicz v. Cervantes*, 284 Ill. App. 3d 524, 528 (1996); *In re Robertson v. Sollitt*, 151 Ill. App. 3d 214, 223 (1987). Thus, the failure to file the affidavit of service until April 30, 2015, did not invalidate the service.

¶ 33 Lastly, we address defendant's claim that he was denied due process during the trial. In the context of a forcible entry and detainer action, a defendant has the right to assert any germane defenses in response to the plaintiff's possession claim. *Rotheimer v. Arana*, 384 Ill. App. 3d 569, 578 (2008). The trial court must consider the underlying merits of a possession claim, as well as the basic procedural requirements of a trial. *Circle Management, LLC v. Olivier*, 378 Ill. App. 3d 601, 611 (2007). 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. *Eckel v. MacNeal*, 256 Ill. App. 3d 292, 296 (1993).

¶ 34 In this case, defendant was not denied due process. He received a bench trial, at which he was afforded ample opportunity to present his defenses. Indeed, the trial court asked him numerous times to present his defenses. In response, he continued to press his claim that plaintiff lacked standing to sue. Defendant was also permitted to cross-examine plaintiff's sole witness, Gaedele. Although the court sustained several objections during the cross-examination, defendant does not specifically challenge any of those rulings. The record shows that the court decided the merits of plaintiff's case, considered and rejected defendant's defenses, and provided



an orderly trial procedure. Although the court insisted that defendant address the issues germane to the proceeding, the record does not show that in doing so the court intimidated, threatened, or bullied defendant. Thus, defendant was not denied due process.

¶ 35

### III. CONCLUSION

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

¶ 37 Affirmed.