

No. 1-17-1755

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JANICE CALHOUN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 16 M1 124717
)	
EDWARD CONWAY,)	Honorable
)	Martin Paul Moltz,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Pierce and Justice Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm the decision of the circuit court. Appellant has not provided us with anything in the record that demonstrates that the circuit court abused its discretion or entered a judgment that was against the manifest weight of the evidence.
- ¶ 2 Following a bench trial, the circuit court granted judgment in favor of plaintiff Janice Calhoun for violations of the Chicago Residential Landlord and Tenant Ordinance (Ordinance) (Chicago Municipal Code § 5-12-010 *et seq.* (amended March 31, 2004)) by her former landlord, defendant Edward Conway. Mr. Conway appeals, arguing that the circuit court's

decision was an abuse of discretion and against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On December 22, 2016, Ms. Calhoun filed a two-count complaint alleging violations of the Ordinance by Mr. Conway. Count one alleged that Mr. Conway violated the Ordinance because he failed to return her security deposit with all appropriate interest after she moved out. Chicago Municipal Code § 5-12-080(a)-(f) (amended July 28, 2010). Count two alleged that Mr. Conway failed to provide her with a copy of the Ordinance when she signed or renewed her lease. Chicago Municipal Code § 5-12-170 (amended Nov. 26, 2013).

¶ 5 The record shows that on April 20, 2017, the circuit court dismissed Ms. Calhoun's complaint for want of prosecution. On May 8, 2017, Ms. Calhoun filed a motion to vacate the dismissal, which the circuit court granted on May 18, 2017. On May 16, 2017, Mr. Conway filed a *pro se* counterclaim, alleging that (1) Ms. Calhoun had not passed her Chicago Housing Authority inspection in 5 years; (2) Ms. Calhoun had destroyed the apartment's stove, the rubber around the refrigerator, and custom shower doors; (4) he had to paint the apartment the last three years in a row; and (4) Ms. Calhoun left the unit without cleaning it.

¶ 6 On May 30, 2017, Ms. Calhoun filed a motion to dismiss Mr. Conway's counterclaim, pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)). On June 16, 2017, Mr. Conway did not appear in court, and the circuit court granted Ms. Calhoun's motion to dismiss. The circuit court's half-sheets and a written order indicate that a trial was held on June 29, 2017, and that the circuit court awarded judgment in favor of Ms. Calhoun in the amount of \$3858.78, and ordered Ms. Calhoun to file a petition for court costs and attorney's fees. On July 7, 2017, Ms. Calhoun filed a motion for \$2187.50 in attorney's fees and court

costs. On July 26, 2017, the circuit court granted Ms. Calhoun's motion for fees in the requested amount.

¶ 7 On July 14, 2017, Mr. Conway filed a *pro se* motion to vacate the circuit court's order of June 16 that dismissed his counterclaim. This motion was filed as a post-judgment motion under section 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2016)). The record does not reflect any ruling on that motion. On August 29, 2017, Mr. Conway filed a motion in the circuit court to certify two bystander's reports of the June 29 proceedings, one written by his daughter and another by his cousin. Nothing in the record indicates that the circuit court ruled on that motion.

¶ 8 On July 10, 2017, while Ms. Calhoun's motion for fees was pending and before either Mr. Conway's motion to vacate the dismissal of his counterclaim or his motion to certify the bystander reports had been filed, Mr. Conway filed, through counsel, a notice of appeal in the circuit court. The notice of appeal sought review of the circuit court's order of June 29, and indicated that Mr. Conway wanted this court to "[r]everse the decision of the circuit court." This was the only notice of appeal that Mr. Conway filed in this case.

¶ 9

II. JURISDICTION

¶ 10 We note that Mr. Conway's appellate brief does not include a jurisdictional statement, as required by Illinois Supreme Court Rule 341(h)(4)(ii) (eff. Nov. 1, 2017). "The purpose of requiring a jurisdictional statement is not merely to tell this court that it has jurisdiction, but to provoke counsel into making an independent review of the right to appeal, before writing the brief." *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 8.

¶ 11 Ms. Calhoun has not filed an appearance in this court, and we entered an order on April 16, 2018, stating that we would take this case on the record and with appellant's brief only. So

no one has raised an objection to our jurisdiction. But it is our responsibility to determine that we have jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009).

¶ 12 According to his notice of appeal, Mr. Conway seeks review of the circuit court's June 29, 2017, order, granting judgment for Ms. Calhoun. He clearly seeks review of this as an appeal from a final judgment of the circuit court. Ill. Const. 1970, art. VI, § 6. On July 7, 2017, Ms. Calhoun filed a petition for attorney's fees, which was still pending at the time Mr. Conway filed his notice of appeal on July 10. But the filing of that petition is not fatal to our jurisdiction, as a premature notice of appeal may become effective after the circuit court has ruled on a post-judgment motion.

¶ 13 Illinois Supreme Court Rule 303(a)(2) states:

“When a timely postjudgment motion has been filed by any party, whether in a jury case or a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered.” Ill. Sup. Ct. R. 303(a)(2)(eff. July 1, 2017).

¶ 14 This court recently applied Rule 303(a)(2) in *5510 Sheridan Road v. U.S. Bank*, 2017 IL App (1st) 160279. There, the circuit court granted summary judgment in favor of the plaintiff and granted the plaintiff leave to file a petition for attorney's fees. *Id.* ¶ 11. Before the circuit court had ruled on the plaintiff's petition for fees, the defendant filed a notice of appeal. *Id.* ¶ 14. This court applied Rule 303(a)(2) and found that although the defendant's notice of appeal was premature when it was filed, it became effective on the date the circuit court granted the

plaintiff's petition for attorney's fees. *Id.* ¶ 15. We found that date by taking judicial notice of the circuit court's online docket. *Id.*; see also *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶ 24, n.4 (appellate court may take judicial notice of online docket report of the clerk of the circuit court of cook county)

¶ 15 Here, in addition to Ms. Calhoun's petition for attorney fees, Mr. Conway filed several post-judgment motions, including a *pro se* motion to vacate the June 16 dismissal of his counterclaim—filed on July 14, 2017—and a *pro se* motion to certify two bystander's reports of the June 29 proceedings—filed on August 29, 2017. The circuit court's online docket does not indicate that any of these motions were ruled on and, in fact, shows that the case was stricken from the call on September 27, 2017. That docket also shows citations to discover assets were issued on October 25, 2017, and, finally, that an order for installment payments was issued on April 23, 2018. We are entitled to take judicial notice of all of this activity. *Id.* Thus, the circuit court clearly treated its June 29 order as final and enforceable, and Mr. Conway abandoned the post-judgment motions that he filed by failing to obtain any ruling on them. See *Fulford v. O'Connor*, 3 Ill. 2d 490, 501 (1954) (A party waives any right to relief by failure to obtain a ruling on the motion from the circuit court.) Therefore, this case became final at the point that the circuit court ruled on Ms. Calhoun's fee petition, and we have jurisdiction to consider it.

¶ 16

III. ANALYSIS

¶ 17 The only argument that Mr. Conway makes for reversing the circuit court decision is that he had no obligation to return to Ms. Calhoun her entire security deposit with interest because, after she moved out, he had to make numerous repairs to her unit. He argues that the circuit court abused its discretion and that the court's ruling in favor of Ms. Calhoun on this issue was against the manifest weight of the evidence.

¶ 18 The Ordinance provides that a landlord can only withhold the tenant's security deposit with interest in very limited circumstances. The Ordinance states that a landlord can withhold:

“a reasonable amount necessary to repair any damage caused to the premises by the tenant or any person under the tenant's control or on the premises with the tenant's consent, reasonable wear and tear excluded. In case of such damage, the landlord shall deliver or mail to the last known address of the tenant within 30 days an itemized statement of the damages allegedly caused to the premises and the estimated or actual cost for repairing or replacing each item on that statement, attaching copies of the paid receipts for the repair or replacement. If estimated cost is given, the landlord shall furnish the tenant with copies of paid receipts or a certification of actual costs of repairs of damage if the work was performed by the landlord's employees within 30 days from the date the statement showing estimated cost was furnished to the tenant.” Chicago Municipal Code § 5-12-080(d)(2) (amended July 28, 2010)

¶ 19 Ms. Calhoun's amended complaint alleges that Mr. Conway gave her an itemized statement but that he did not provide any receipts or certification of actual costs, and nothing in the record indicates Mr. Conway provided such documentation to Ms. Calhoun. The record also contains nothing that explains what evidence, if any, was presented on either side of this case at trial. Because the bystander's reports were never certified, we must disregard them. Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005) (providing that, absent stipulation, only a *certified* bystander's report shall be included in the record on appeal).

¶ 20 The burden was on Mr. Conway, as the appellant, to supply a sufficiently complete record on appeal, and “[a]ny doubts which may arise from the incompleteness of the record will

be resolved against the appellant.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). Mr. Conway has failed to present us with any certified record of the proceedings at trial. Furthermore, nothing in the record on appeal suggests that the circuit court either abused its discretion or ruled contrary to the manifest weight of the evidence on either of Ms. Calhoun’s claims. Under these circumstances, we must presume that the circuit court’s order conformed with the law and had a sufficient factual basis. *Id.* Accordingly, we affirm.

¶ 21

IV. CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 23 Affirmed.