2018 IL App (1st) 171934-U
Order filed: December 28, 2018

FIRST DISTRICT
Fifth Division

No. 1-17-1934

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 JUDICIAL DISTRICT

CINQUE ROBINSON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 17 M1 102252
	)	
ADELIA R. OWENS and KARLA OWENS-DAVIS,	)	Honorable
	)	John A. O'Meara,
Defendants-Appellees.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment

ORDER

¶ 1 ***Held***: We dismissed the appeal where the insufficient record on appeal does not show that the motion of plaintiff-appellant to reconsider the denial of Rule 137 sanctions was disposed of by the circuit court, or that the order of the circuit court dismissing his complaint was not a final appealable order and, therefore, we are unable to determine our jurisdiction.

¶ 2 Plaintiff-appellant, Cinque Robinson, appeals *pro se* from an order of the circuit court granting the motion to dismiss of defendants-appellees, Adelia R. Owens and Karla Owens-

Davis, in this landlord-tenant action pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2016)). For the following reasons, we dismiss the appeal.[1]

¶ 3 As an initial matter, we note that plaintiff has not included a report of proceedings in the record on appeal. It is the appellant's burden to present a sufficiently complete record on appeal. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 839, 392 (1984).

¶ 4 The common law record shows that, on January 20, 2017, plaintiff filed a complaint against defendants alleging a breach of the implied warranty of habitability and various violations relating to section 13-196-410 of the Chicago Municipal Code (eff. Mar. 9, 2005), and section 13-160-100 of the Chicago Municipal Code (eff. Dec. 12, 1949), that he was the tenant of a first floor unit in an apartment building located on East 73rd Street in Chicago, Illinois, and defendants are his landlords. Plaintiff further alleged that defendants failed to provide heat to his unit on twelve occasions, between November 2016 and January 2017, and that the doorknob to the front door of his unit "continually comes off," making it "impossible to exit the building." Plaintiff sought damages of $6,000 based on "the amount for which the City of Chicago fines a landlord for their failure to provide heat to their tenants."

¶ 5 On May 10, 2017, plaintiff filed a Rule 137 motion for sanctions which alleged that defendants and their attorney engaged in "unlawful intimidation" against him by addressing a letter containing a settlement offer to plaintiff's mother, Priscilla Reynolds, who was not a party to the lawsuit. The court denied defendant's motion on May 26, 2017.

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

¶ 6 On May 17, 2017, defendants filed a section 2-619.1 combined motion to dismiss complaint or, in the alternative, for summary judgment, which argued that: plaintiff lacked standing because his mother was the lessee of the apartment; because he was not a tenant with a lease agreement, he had no right to damages; and that there was no defect in the building constituting a breach of the implied warranty of habitability. Further, defendants asserted that plaintiff's claims regarding the heat and the doorknob were unsupported conclusions and were contrary to the attached affidavits of various tenants of the building. Defendants' affidavits, as well as documents demonstrating their efforts to respond to plaintiff's heat complaints, were also attached to their motion to dismiss.

¶ 7 On June 9, 2017, plaintiff filed an answer to defendants' motion to dismiss, which alleged that defendants had not proven their contentions and accused them and the other tenants of the building of lying in their affidavits. Further, plaintiff stated that he was submitting "videos and pictures" in support of his claims.

¶ 8 On June 23, 2017, defendants filed a reply in support of their section 2-619.1 motion, which reiterated their previous claims and noted that, when plaintiff submitted his response, he submitted to defendants 27 electronic files, which included photographs and other media files. However, none of this evidence is contained in the record on appeal.

¶ 9 On June 26, 2017, while the motion to dismiss was still pending, plaintiff filed a motion to reconsider sanctions and requested that the circuit court not consider his motion to reconsider until after the hearing on defendants motion to dismiss. Plaintiff also claimed that, in ruling on his original motion for sanctions, the circuit court failed to consider "the privacy of, or non-public access of settlement negotiations" and, that by sending a settlement letter to his mother, defendants "publiciz[ed]" a "private conversation." Plaintiff argued that his mother received the

settlement letter sent by defendants' attorney, that she has "a tremendous amount of influence with and over [him]," and that she asked him to " 'drop the lawsuit.' " Finally, plaintiff claimed that the court was misled by defendants' attorney when they stated that the settlement letter was only sent to plaintiff's mother because the letter previously sent to plaintiff was returned by the post office.

¶ 10 Plaintiff, thereafter, filed an amended answer to defendants' motion to dismiss on June 30, 2017, and attached his own affidavit which averred to the same facts pled in his complaint and initial answer to defendants' motion to dismiss. Plaintiff stated that he would bring phone records to court on the date of the hearing. However, there are no phone records contained in the record on appeal.

¶ 11 The court ultimately granted defendants' motion to dismiss and dismissed plaintiff's complaint, with prejudice, "due to the court's finding that plaintiff lacks standing as a matter of law." This *pro se* appeal followed.

¶ 12 On appeal, plaintiff contends that the circuit court erred by dismissing his complaint and finding that he was not a tenant of the building. Defendants have not filed their appellees' brief. On this court's own motion, we ordered the case be taken on plaintiff's appellate brief and record on appeal only. An appeal may be decided without the benefit of an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (a reviewing court can decide the merits of the appeal where the record is simple and the claimed errors can be decided without the aid of an appellee's brief). We note that plaintiff has filed two briefs on appeal. On November 22, 2017, we entered and continued plaintiff's motion for extension of time to allow him additional time to e-file his brief and allowed him to file the brief attached to

his motion *instanter*. On January 31, 2018, plaintiff filed an additional brief, which provided further details regarding his appeal.

¶ 13 Initially, we "must be certain of [our] jurisdiction prior to proceeding in a cause of action." *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998). "[A]ppeals may ordinarily only be taken from final orders which dispose of every 'claim'—*i.e.*, 'any right, liability or matter raised in an action.' " *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 339 (2001) (quoting *Marsh v. Evangelical Covenant Church*, 138 Ill. 2d 458, 465 (1990)). If an order does not resolve all claims, it must make an "an express finding that there is no just reason for delaying an appeal. Otherwise, the order is not appealable." *Marsh*, 128 Ill. 2d. at 465; see also Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016).

¶ 14 Our supreme court has previously found that motions for sanctions, under Rule 137, constitute claims in a cause of action, and alleged violations do not give rise to a separate civil suit. *Brown*, 197 Ill. 2d at 339; see also Ill. S. Ct. R. 137 (eff. July 1, 2013). Because such motions constitute claims, and a notice of appeal cannot be filed before the circuit court has disposed of all claims, a notice of appeal cannot be filed prior to the circuit court's ruling on all Rule 137 motions. *Brown*, 197 Ill. 2d at 340.

¶ 15 Because the record before us is insufficient, we are unable to determine whether we have jurisdiction to review this appeal. As the appellant, it is the plaintiff's burden to establish our jurisdiction to consider his appeal. *U.S. Bank National Ass'n v. In Retail Fund Algonquin Commons, LLC*, 2013 IL App (2d) 130213, ¶ 24 (citing Ill. S. Ct. R 341(h)(4) (eff. July 1, 2008). While the notice of appeal shows plaintiff appealed from the circuit court's August 2, 2017, order, it does not appear that the trial court ruled on plaintiff's motion to reconsider the denial of his motion for Rule 137 sanctions, which was filed on June 26, 2017. The court granted

defendants' section 2-619.1 motion to dismiss on August 2, 2017, but the written order included in the record does not dispose of plaintiff's motion to reconsider, nor is there any other indication in the record or the docket of the circuit court that the court resolved the motion.[2] Plaintiff claims in his brief that the circuit court "stated that all other matters are dismissed by default, including the perjury matter." However, as the record on appeal contains no transcripts of proceedings or an agreed statement of the proceedings to show what occurred at the hearing on defendants' motion to dismiss or any other hearings, this unsupported statement is insufficient to demonstrate that the court did, in fact, rule upon his pending motion. Thus, the record on appeal seems to indicate that the motion to reconsider is still pending before the circuit court and that all pending claims have not been resolved. See *Brown*, 197 Ill. 2d at 339-40.

¶ 16 Moreover, the circuit court's August 2, 2017, order granting the motion to dismiss the complaint does not contain the necessary Rule 304(a) language expressly finding that "there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016); see also *Brown*, 197 Ill. 2d at 341 (noting a notice of appeal filed during the pendency of a Rule 137 motion is " 'worthless in the absence of a Rule 304(a) finding' " (quoting P. Esposito, *Timing the Notice of Appeal in Light of Requests for Attorneys' Fees and Costs: The Illinois Approach,* 4 App. L. Rev. 55, 61-62 (1992))). Without such language or a ruling on plaintiff's motion to reconsider the denial of Rule 137 sanctions, the circuit court's order granting defendants' motion to dismiss was not a final appealable order (see *Marsh*, 128 Ill. 2d. at 465), and we have no choice but to conclude that plaintiff's notice of appeal was filed prematurely before the resolution of all claims. "We cannot presume that we have authority to

[2] We may take judicial notice of the circuit court's online docket report. See *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶ 24, n. 4 (noting that "[t]he docket is a matter of record which this court may take judicial notice, and its contents are not difficult to ascertain"). The docket of plaintiff's case, compared with the entire common law record, does not reflect an entry disposing of the motion to reconsider.

decide an appeal on the basis of a record insufficient to show our jurisdiction." *McCorry v. Gooneratne*, 332 Ill. App. 3d 935, 941 (2002).

¶ 17 Because the insufficient record on appeal prevents us from determining whether we have jurisdiction, we dismiss the appeal. *Knox v. Taylor*, 2012 IL App (2d) 110686, ¶¶ 3-4.

¶ 18 Dismissed.