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2018 IL App (3d) 170207-U

Order filed July 5, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

ARTHUR BRUCE and ROZZETTA BRUCE,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiffs-Appellants,)	LaSalle County, Illinois,
)	
v.)	Appeal No. 3-17-0207
)	Circuit No. 16-LM-52
)	
JEFFREY BRUCE,)	Honorable
)	Joseph P. Hettel,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred as a matter of law when it denied the plaintiffs' petition for money judgment on jurisdictional grounds.

¶ 2 In February 2016, Arthur and Rozzetta Bruce brought an action against Jeffrey (Jeff) Bruce, claiming that they overpaid their obligation under a "rent to own" contract for real property and Jeff refused to transfer them title to the property and refund their overpayments. In May 2016, Arthur and Rozzetta filed a motion for summary judgment, arguing the same. In September 2016, the trial court granted their motion in part: it (1) ordered Jeff to transfer the title

of the property to them by quitclaim deed and (2) denied their request for the overpaid rent. In November 2016, Arthur and Rozzetta filed a petition for money judgment, requesting a refund of their overpayments. In January 2017, the court denied the petition, holding that it did not have jurisdiction because it denied their request for overpaid rent on September 20. Arthur and Rozzetta filed a motion to reconsider, which the court denied. Arthur and Rozzetta appeal.

¶ 3

FACTS

¶ 4

In December 2003, cousins Arthur and Jeff entered into a “rent to own contract” for the sale of real property. Among other things, the contract provided that Arthur was to pay Jeff \$450 a month until he paid the total amount of \$31,700. Once Arthur paid the total amount, the contract required Jeff to sign the title of the property over to him.

¶ 5

On February 1, 2016, Arthur and Rozzetta filed a complaint against Jeff. They stated that they made payments from December 1, 2003, to September 10, 2015, totaling \$54,795. They alleged that Jeff refused to refund their overpayment of \$23,095. They requested that the trial court order Jeff to (1) convey title to the premises by deed free and clear of any encumbrance and (2) return the overpayment amount of \$23,095.

¶ 6

On May 4, 2016, Arthur and Rozzetta filed a motion for summary judgment. In their motion, they made the same allegations in their complaint, but explained that they made overpayments as a result of inadvertence. They stated, that due to employment layoffs, they did not make certain payments as directed by the contract terms. However, they argued that Jeff waived his right to terminate the contract on this basis because he accepted the late and partial payments. They also believed that Jeff mortgaged the property to Streator Community Credit Union for \$20,000. In his response, Jeff admitted that he had a mortgage on the subject property. However, he denied that the contract was an installment contract or a contract for deed.

¶ 7 On September 20, 2016, the trial court held a hearing on the motion for summary judgment. The court made the following written findings: (1) a contract between the parties was signed, (2) the total purchase price in the contract was paid (\$31,700), (3) Jeff must quitclaim his interest in the property to Arthur and Rozzetta, and (4) the order was final and appealable. At the hearing, the court also denied Arthur and Rozzetta’s request for the return of the overpaid rent:

“I’m going to *** order him to quitclaim his interest in the property, but I’m not going to order him to pay them any money for overpayments. They waived their right to that by living in the property without title to the property. Jeff continued *** to pay the obligations that any owner would have, so I don’t see any need to reimburse them for the property.”

¶ 8 On November 17, 2016, Arthur and Rozzetta filed, among other things, a petition for money judgment, wherein they sought the return of overpaid rent in the amount of \$17,532.52 (the amount of overpayment after deducting housing expenses paid by Jeff).

¶ 9 On January 11, 2017, the trial court denied the petition for money judgment.

¶ 10 On January 18, 2017, Arthur and Rozzetta filed a motion to reconsider their petition for money judgment.

¶ 11 On February 24, 2017, the trial court held that it did not have jurisdiction of the overpayment issue because it initially denied this request on September 20.

¶ 12 Arthur and Rozzetta appeal.

¶ 13 ANALYSIS

¶ 14 On appeal, Arthur and Rozzetta argue that the trial court erred when it denied their petition for money judgment. Jeff filed a motion to dismiss this appeal, arguing that this court lacks jurisdiction because Arthur and Rozzetta failed to file their notice of appeal within 30 days

of the court's final judgment. This court ordered the motion be taken with the case.

¶ 15

I. Jurisdiction

¶ 16

We first address Jeff's motion to dismiss this appeal. Illinois Supreme Court Rule 303 governs the timing of an appeal from a final judgment of the circuit court. Specifically, it requires that a notice of appeal must be filed within 30 days after the entry of the final judgment appealed from or, if a timely postjudgment motion directed against the judgment is filed, within 30 days after the entry of the order disposing of the last pending postjudgment motion. Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015). The essence of Jeff's jurisdictional argument is that the trial court ruled on all issues on September 20 and any notice of appeal must have been filed within 30 days of that date. Arthur and Rozzetta argue that their appeal is timely because the court's September 20 order partially granted their motion for summary judgment and it did not dispose of the overpayment issue in a final and written order until February 24.

¶ 17

On September 20, the trial court partially granted Arthur and Rozzetta's motion for summary judgment. At that hearing, the court found that a contract existed between the parties and that the agreed upon purchase price of \$31,700 had been paid. The court ordered Jeff to quitclaim his interest in the property to Arthur and Rozzetta. The court specifically stated that it was not going to order Jeff to return any funds paid in excess of the purchase price because of the obligations he maintained as an owner. *Supra* ¶ 7. A written order followed, but it did not mention that the court denied Arthur and Rozzetta's request for the return of overpaid rent.

¶ 18

On November 17, almost two months later, Arthur and Rozzetta filed a petition for money judgment, wherein they asked the trial court to order Jeff to return overpaid rent in the amount of \$17,532.52. It appears that they lowered their initial request of \$23,095 to \$17,532.52 after taking into consideration the court's comments at the September 20 hearing—that Jeff still

had obligations as an owner while these overpayments were being made (property taxes, municipal services, etc.). On January 11, the court denied their petition for money judgment in a written order without explanation. A transcript of this hearing is not in the record, but the parties purport that the court decided it did not have jurisdiction over the overpayment issue because it disposed of that issue on September 20. On January 18, Arthur and Rozzetta filed a motion to reconsider the denial of their petition for money judgment. On February 24, according to a transcript and the court's written order, the court denied the motion to reconsider, again reiterating that it did not have jurisdiction.

¶ 19 Arthur and Rozzetta argue that their appeal is timely because the trial court did not include the denial of their request for the overpaid rent in a *written order* until January 11, which was then followed by a proper postjudgment motion. They argue in their brief, “If a court makes a ‘ruling,’ that ruling must be embodied into an order to become the document that is the basis for an appeal.” They fail to cite any authority to support this assertion. Nonetheless, it is true that the court's September 20 written order granting partial summary judgment did not state that the court denied Arthur and Rozzetta's request for the return of the overpaid rent. However, the transcript from that hearing indicates that the court explicitly considered and denied this request. Therefore, it appears that the court's written order and its oral pronouncement are conflicting—the court orally denied this request and the written order fails to mention it. It is well settled that when the oral pronouncement of the court and its written order conflict, the oral pronouncement of the court controls. See *People v. Maxey*, 2015 IL App (1st) 140036, ¶ 46 (while a written order is evidence of the judgment of the circuit court, the trial judge's oral pronouncement is the actual judgment of the court); *Barnes v. Lolling*, 2017 IL App (3d) 150157, ¶ 23 n.8 (a written order is merely evidence of the court's judgment. As such, the court denied their request for

overpayment on September 20 at the hearing on their motion for summary judgment.

¶ 20 More importantly, the trial court denied the overpaid rent in the context of a motion for summary judgment. “Ordinarily, the denial of summary judgment is not appealable, because such an order is interlocutory in nature.” *Clark v. Children’s Memorial Hospital*, 2011 IL 108656, ¶ 119. Our supreme court has carved out two exceptions to this rule: (1) when the parties have filed cross-motions for summary judgment and one party’s motion is granted and the other party’s is denied and (2) when the case is otherwise properly before a reviewing court from a final judgment and no trial or hearing was conducted. *Id.*

¶ 21 This case did not meet either exception. First, Jeff did not file a cross motion for summary judgment. Second, the supreme court has declined to expand this rule to situations, such as the one presented in this case, where an order contains a denial of a motion for summary judgment as to one claim, but contains a final judgment as to another separate claim. See *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341, 358-59 (1999); see also *Davis v. Loftus*, 334 Ill. App. 3d 761, 768-69 (2002). We also note, that although the court held that its September 20 order was “final and appealable,” this is of no consequence. See *Blott v. Hanson*, 283 Ill. App. 3d 656, 660 (1996) (“A Rule 304(a) finding does not make a nonfinal order appealable; rather, the Rule 304(a) finding makes a final order appealable where there are multiple parties or claims in the same action.”); see also *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 544 (2011) (“[a] circuit court’s declaration that an order is ‘final and appealable,’ without reference to the justness of delay, or even reference to immediate appealability, evinces no application of the discretion Rule 304(a) contemplates.”). Therefore, if Arthur and Rozzetta had filed this appeal within 30 days of September 20, this court would have dismissed it for lack of jurisdiction, as the issue of overpaid rent lacked finality.

¶ 22 On September 20, when the court denied Arthur and Rozzetta’s request for the overpaid rent, it essentially found that a genuine issue of material fact existed as to that issue. See 735 ILCS 5/2-1005 (West 2016). At that point, the parties would move forward to litigate the overpaid rent issue only, because the court only granted summary judgment in their favor on the issue of title. Therefore, Arthur and Rozzetta’s November 17 petition for money judgment was properly before the court, wherein they sought a final judgment on the overpayment issue. On January 11, the court denied the petition and a timely motion to reconsider was filed. On February 24, the court denied the motion to reconsider, explaining that it did not have jurisdiction over that issue. On March 24, they filed this appeal. This appeal is timely because it was filed within 30 days of the denial of a proper postjudgment motion. Ill. S. Ct. R. 303(a) (eff. Jan 1. 2015). Accordingly, we deny Jeff’s motion to dismiss this case for lack of jurisdiction.

¶ 23 We would be remiss to ignore that it appears that the majority of the confusion in this case stemmed from poor drafting of the complaint and motion for summary judgment. The complaint and motion for summary judgment do not state Arthur and Rozzetta’s cause(s) of action or explain whether they were bringing multiple counts against Jeff. See 735 ILCS 5/2-603 (West 2016) (“All pleadings shall contain a plain and concise statement of the pleader’s cause of action” and “[e]ach separate cause of action upon which a separate recovery might be had shall be stated in a separate count, *** separately pleaded, designated and numbered.”). Instead, they only set forth facts and their requested relief. Regardless, any objections to the deficiencies of Arthur and Rozzetta’s filings have been forfeited. See 735 ILCS 5/2-615 (West 2016).

¶ 24 II. Petition for Money Judgment

¶ 25 The trial court refused to rule on the merits of Arthur and Rozzetta’s petition for money judgment because it found that it did not have jurisdiction, stating that it disposed of this issue in

a final order on September 20. Whether the trial court had jurisdiction over this petition is a purely legal question, and our review is *de novo*. *In re Luis R.*, 239 Ill. 2d 295, 299 (2010). For the reasons discussed above, the September 20 order was not a final and appealable order. Therefore, the November 17 petition for money judgment was properly before the court, and the court erred as a matter of law when it denied the petition on jurisdictional grounds. Accordingly, we reverse the court's order and remand this cause for a ruling on the merits of the petition.

¶ 26

CONCLUSION

¶ 27

The judgment of the circuit court of LaSalle County is reversed, and the cause is remanded for a ruling on the merits of the petition for money judgment.

¶ 28

Reversed and remanded with directions.