

2019 IL App (1st) 180981-U

No. 1-18-0981

Order filed October 11, 2019

Fifth Division

**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  
FIRST DISTRICT

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MAC PROPERTY MANAGEMENT LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 17 M1 715638
	)	
KAREEMAH CLARK,	)	Honorable
	)	Israel A. Desierto,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.  
Justices Rochford and Delort concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Circuit court's judgment granting plaintiff possession of the subject property and denying defendant's motion to reconsider that ruling is affirmed where defendant failed to provide a sufficient record to show that the circuit court erred in entering judgment.
- ¶ 2 In this forcible entry and detainer action, defendant Kareemah Clark appeals *pro se* from an order of the circuit court of Cook County denying her motion to reconsider the court's prior eviction order granting possession of the subject property to plaintiff. On appeal, defendant

contends that the court erred when it entered judgment in favor of plaintiff because plaintiff's calculation of the amount of rent due was incorrect, and the ruling was based on incorrect information and mistaken facts. We affirm.

¶ 3 Documents in the record show that on September 19, 2017, plaintiff filed a complaint for forcible detainer and rent against defendant alleging that it was entitled to possession of her apartment on Hyde Park Boulevard. Plaintiff alleged that defendant owed \$2789.80 plus costs for past due rent for August and September of 2017, and that she unlawfully withheld possession of the unit from plaintiff. Plaintiff requested that the court grant it possession of the property, the amount of past due rent plus costs, and any additional rent due and owed to plaintiff by defendant at the time of trial.

¶ 4 On November 15, 2017, the circuit court entered a continuance order which also granted plaintiff leave to accept use and occupancy payments from defendant without prejudice. The order further noted that defendant had waived service by process and submitted to the court's jurisdiction, and that she was going to procure counsel. On November 21, 2017, counsel entered her appearance for defendant.

¶ 5 On December 15, 2017, defendant, through counsel, filed an affirmative defense for breach of the implied warranty of habitability. Defendant alleged that the dwelling unit had a substantial defective condition in that she was being billed double for electricity by plaintiff and Commonwealth Edison. Defendant further alleged that her rental payments of \$1536 per month were far in excess of the value of the dwelling unit. Defendant claimed that she had complained to plaintiff on many occasions, but that plaintiff failed to take the remedial action necessary to bring the apartment and common areas of the building into compliance with the Chicago

Municipal Code. Defendant alleged that due to the numerous and substantially defective conditions, the fair market rental value for her unit should have been \$1300 per month, and that she was entitled to have the rent offset by \$1652. Defendant further asserted that by failing to maintain the dwelling unit without substantially defective conditions, plaintiff had breached the implied warranty of habitability. Defendant requested that the court dismiss plaintiff's action for possession, and award her court costs and any such other relief that the court deemed equitable and just.

¶ 6 On January 12, 2018, the circuit court entered an agreed order stating that defendant acknowledged that she owed plaintiff \$9517.70 through January 2018. The order established a payment schedule whereby defendant would make monthly payments to plaintiff until the outstanding balance was paid in full. The payment plan was in addition to defendant's monthly rent payments, which she was to resume making on or before the first of each month beginning February 1, 2018. The order provided that defendant was on probation for a period of one year from the entry of the order, and that time was of the essence for defendant's performance. The order further stated:

“If she fails to make any payments due under this order and/or materially breaches the terms of her lease, plaintiff, upon notice of motion and motion to Defendant's counsel, shall be entitled to an order for possession with enforcement instanter plus a money judgment for \$9517.70, less amounts paid towards that amount plus additional rent that accrues, plus costs.”

Defendant signed the order, reflecting her agreement. The circuit court retained jurisdiction to enforce the terms of the order and dismissed the case without prejudice.

¶ 7 On April 4, 2018, plaintiff filed a motion for an order for possession and money judgment pursuant to the parties' agreed order. Plaintiff moved the court to vacate the January 12 dismissal, reinstate the case, and to enter an order for possession *instanter* and money judgment in favor of plaintiff in the amount of \$7222.30, plus costs in the amount of \$544.97, for a total of \$7767.27, plus any additional amounts that would accrue under the lease through the date of the hearing on the motion, plus costs. Plaintiff argued that defendant failed to comply with the terms of the agreed order by failing to pay her full monthly rental payment of \$1536 on or before March 1, 2018, and the \$1500 March arrearage payment. Plaintiff attached to its motion a ledger that detailed all of the monetary activity for defendant's account from July 12, 2017, when she initiated her lease, through April 1, 2018. Plaintiff also attached an affidavit from its manager, Anthony Albino, stating that he would testify under oath that defendant failed to comply with the terms of the agreed order by failing to pay her rent and arrearage payments for March, and that her total amount due to plaintiff was \$7767.27.

¶ 8 On April 24, 2018, the court entered an order continuing the case to April 27 for a hearing on plaintiff's motion for an order for possession and money judgment. The order further stated that defendant was to provide proof of payment in compliance with the agreed order.

¶ 9 On April 27, 2018, the circuit court entered an eviction order granting plaintiff's motion for possession of the subject property. The order stated that defendant must move out of the property on or before May 11, and if she failed to do so, the sheriff was ordered to evict her. The order also granted plaintiff a monetary judgment of \$5253.70. The order indicated that it was entered "[a]fter hearing" and per the agreed order that had been entered on January 12.

¶ 10 That same day, defendant, appearing *pro se*, filed a motion for reconsideration claiming that payments she made to plaintiff were missing and not applied. Defendant also filed a motion for substitution of judge, with no further argument.

¶ 11 On May 11, 2018, defendant filed a *pro se* motion for an “amended complaint” requesting an extension of time. Defendant stated that she had paid “a lot of funds for pay and stay.” She requested a reconsideration of “case law that would apply Equitable Doctrone [sic] and unclean hands.” Defendant asserted that plaintiff had accepted payments in “bad faith.” She also requested to “transfer judges.”

¶ 12 The circuit court heard all of defendant’s motions that same day and entered an order denying them all. The order also stated that defendant’s oral motion for additional time to vacate the premises was denied, and that the order for possession entered on April 27 stood and remained enforceable.

¶ 13 On appeal, defendant contends that the circuit court erred when it entered judgment in favor of plaintiff because plaintiff’s calculation of the amount of rent due was incorrect, and the court’s ruling was based on incorrect information and mistaken facts. Defendant claims that the agreed order was verbally altered when plaintiff accepted payments for her past due rent that were made on dates that differed from the scheduled due dates, and then did not apply those payments to the rent due. She alleges that plaintiff acted in bad faith and with unclean hands. She also claims that plaintiff repeatedly refused to accept her rent payments, and charged invalid late fees and other fees to her account. In addition, defendant contends that the court erred when it denied her motion to reconsider and vacate the judgment because there is an “eviction defense” for victims of domestic violence. She asserts that plaintiff stated that it would accept domestic

violence relocation payments from the City of Chicago which included one month's rent and security deposit, but subsequently would not submit the required documentation to the city. Defendant points out that she appeared *pro se* at the hearing on her motion for reconsideration and states that she did not understand the proceedings. She believed that she was going to pay the amount due and remain in the apartment. Defendant further claims that she was never properly served with a five-day notice.

¶ 14 Plaintiff has not filed a responsive appellee's brief. This court, however, has elected to consider this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 15 We find that our review of this appeal is hampered by an incomplete record. An appellant has the burden of presenting a sufficiently complete record of the circuit court proceedings to support any claims of error, and in the absence of such a record, this court will presume that the circuit court's order conformed with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts arising from an incomplete record will be resolved against the appellant. *Id.*

¶ 16 Pursuant to Supreme Court Rule 323 (eff. July 1, 2017), in lieu of a circuit court transcript, an appellant may file a bystander's report (Rule 323(c)) or an agreed statement of facts (Rule 323(d)). Here, the record does not contain a report of the circuit court proceedings in any format for the January 12 hearing when the court entered the agreed order with the payment schedule and conditions, the April 27 hearing when the court entered the eviction order granting plaintiff's motion for possession of the property, or the May 11 hearing when the court denied defendant's motions for reconsideration and substitution of judge.

¶ 17 The record before this court consists of one volume of common law documents, which alone are insufficient to allow this court to find an error by the circuit court. The January 12 agreed order indicates that the cause came to be heard for trial, and that the parties, who were both represented by counsel at that time, were in agreement. The order further indicates that defendant acknowledged in court that she owed plaintiff \$9517.70. The order clearly defined the payment schedule, the conditions of the agreement, and plaintiff's entitlement to possession should defendant fail to comply with the order. The April 27 order granting possession of the property to plaintiff and the May 11 order denying defendant's motions for reconsideration both indicate that they were entered following hearings.

¶ 18 However, without a report of proceedings, this court has no knowledge of what arguments the parties made before the court, or what evidence was presented. We do not know the factual findings the court made, or the reasoning and rationale that provided the basis for the circuit court's ruling. Under these circumstances, this court must presume that the circuit court acted in conformity with the law and ruled properly after considering the evidence before it. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005); *Foutch*, 99 Ill. 2d at 391-92.

¶ 19 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.