

No. 1-18-1531

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

INVERSE ASSET FUND, LLC,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County, Illinois.
)	
v.)	No. 18 M4 2854
)	
JAMES REED and UNKNOWN OCCUPANTS,)	Honorable
)	Robin D. Shoffner,
Defendants.)	Judge Presiding.
)	
(James Reed, Defendant-Appellant).)	

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court’s order granting summary judgment in favor of plaintiff reversed and order evicting defendant vacated where plaintiff’s forcible entry and detainer action was prematurely filed.

¶ 2 In this forcible entry and detainer action brought by plaintiff-appellee Inverse Asset Fund, LLC, defendant-appellant James Reed appeals from the trial court’s June 18, 2018 order evicting him from the property at 7492 West Country Club Lane in Elmwood Park, Illinois and granting summary judgment in favor of Inverse Asset. On appeal, Reed argues that the trial court erred in granting his counsel’s motion to withdraw and in

granting summary judgment before the foreclosure sale was confirmed.¹

¶ 3 Finding that the forcible entry and detainer action was premature, we reverse the court's grant of summary of judgment and remand for further proceedings.

¶ 4 BACKGROUND

¶ 5 Inverse Asset purchased the subject property in 2017 at a judicial sale after foreclosure proceedings had commenced against 7942 Country Club Inc., the property's owner, and unknown owners. (Reed was allegedly the president of 7492 Country Club Inc.) The chancery division of the Circuit Court of Cook County entered an order confirming the sale and granting possession to Inverse Asset on December 20, 2017. Within 30 days, on January 19, 2018, Reed moved to intervene in the foreclosure proceedings (to which he was not a party) and vacate the court's order. Reed noticed his motion for presentment before the court on February 14, but no ruling was made that day.

¶ 6 On April 20, 2018, while Reed's motion to vacate was pending in the chancery division, Inverse Asset filed a forcible entry and detainer lawsuit against unknown occupants in the Fourth Municipal District of the Circuit Court of Cook County, alleging that the occupants "held over after the tenancy ended." Almanza Law LLC entered its appearance on behalf of the unknown occupants approximately one month later, on May 21, 2018.

¶ 7 On May 31, Inverse Asset moved for use and occupancy payments, asking the circuit court to require Reed, who was not yet named as a defendant in the forcible entry

¹ Inverse Asset has not filed an appellee's brief, but we may consider the appeal on Reed's brief alone, pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976), holding that reviewing court may decide case on appellant's brief if the record is "simple" and the alleged errors are such that the court can decide them without aid of an appellee's brief.

and detainer action, to pay Inverse Asset \$1,200 per month during the pendency of the action. The motion alleged that Reed, who was served with a copy of the forcible entry and detainer complaint on May 13, had no leasehold interest in the property, did not currently pay rent, and had refused to vacate the property. On that same day, Inverse Asset also moved for summary judgment on its forcible entry and detainer suit on the basis that it held title to the property pursuant to a judicial sales deed and that Reed and other unknown occupants had no superior right of possession.

¶ 8 The parties, through counsel, appeared before the circuit court on June 4, 2018, and the court entered a briefing schedule on both motions, ordering unknown occupants to respond by June 11 and setting the hearing on the motions for June 18. The order of June 4 further granted Inverse Asset leave to add Reed as a party defendant.

¶ 9 The next day, Mark Almanza of Almanza Law LLC moved to withdraw as Reed's attorney of record, alleging that he had not received payment for his services and that Reed had been uncommunicative with him. The motion did not contain a certificate of service, nor did the motion indicate that Reed was otherwise given notice of the motion. See Ill. Sup. Ct. R. 13(b)(2) (eff. July 1, 2017) ("Unless another attorney is substituted, the attorney must give reasonable notice of the time and place of the presentation of the motion for leave to withdraw, by personal service, certified mail, or a third-party carrier directed to the party represented at the party's last known business or residence address.").

¶ 10 On June 18, the circuit court, in proceedings that were not transcribed, granted Inverse Asset's motion for summary judgment and entered an order requiring Reed to

vacate the property “on or before 6/5/2018.”² That same day, the court allowed Reed’s counsel to withdraw, despite the fact that the withdrawal motion was not noticed for presentment until June 25. The order granting Almanza’s motion to withdraw did not allow, as Rule 13(c)(2) requires, 21 days for Reed to appear *pro se* or through substitute counsel. The record does not indicate whether Reed appeared in court that day.

¶ 11 In the ensuing days, between June 22 and June 25, Reed filed three motions *pro se*: (i) a motion to vacate the judgment and order of June 18; (ii) a motion to dismiss Inverse Asset’s complaint arguing that it was prematurely filed given that the chancery court had not yet ruled on his motion to vacate the order confirming sale; and (iii) an objection to his attorney’s withdrawal. On June 25, when the parties were next in court, the court denied Reed’s motion to vacate but granted Reed an extension of time until July 25, 2018 to vacate the property. The order does not contain a ruling on Reed’s objection to withdrawal of counsel, nor does the record include a transcript of this hearing.

¶ 12 On June 27, attorney Marco A. Rodriguez sought leave to appear on behalf of Reed, and on July 13, Rodriguez, on Reed’s behalf, moved to reconsider and/or vacate the eviction order of June 18. The trial court granted Rodriguez leave to file an appearance, but on July 16, 2018, denied his motion for reconsideration.

¶ 13 In the meantime, Rodriguez had also sought leave to appear on behalf of Reed and 7492 Country Club Inc. in the foreclosure action, which was still pending in the chancery court. The chancery court allowed Rodriguez leave to appear on behalf of 7492 Country Club Inc., but not on behalf of Reed, who was not a party to the foreclosure proceedings given that title was held by the corporate entity. The chancery court also

² The date is obviously in error.

granted Rodriguez leave to file an amended motion to vacate the December 20, 2017 order confirming sale as well as any other necessary pleadings before July 18, 2018. Ultimately, on July 25, 2018, the chancery court denied 7492 Country Club Inc.'s motion to vacate.³

¶ 14 Reed timely appealed from the circuit court's denial of his motion to vacate its order of eviction and entry of summary judgment in favor of Inverse Asset.⁴

¶ 15 ANALYSIS

¶ 16 On appeal, Reed challenges both the circuit court's ruling on his former counsel's motion to withdraw as well as the court's entry of summary judgment in favor of Inverse Asset. Finding that summary judgment was erroneously granted, we need not address Reed's argument that the circuit court abused its discretion in permitting former counsel to withdraw. We note, however, that with respect to all motions to withdraw, compliance with Supreme Court Rule 13(c) is necessary. As relevant here, Rule 13(c) provides that counsel must give his client reasonable notice of the time and place of presentation of the motion to withdraw, and that notice must advise the client how to insure continuing notice of any action in the case. Ill. S. Ct. R. 13(c)(2) (eff. July 1, 2017). In addition, if the party does not appear in court when the motion for withdrawal is granted, within three

³ While the orders of the chancery court do not appear in the record, they are attached to Reed's brief as an appendix. Ordinarily, we do not consider documents appended to the brief that are not made part of the record on appeal, but we may take judicial notice of the orders entered by the trial court. See *Koshinski v. Trame*, 2017 IL App (5th) 150398, ¶¶ 10-11.

⁴ The record is silent as to whether Reed continues to occupy the subject property. Given that Reed was ordered evicted by July 25, 2018, nearly one year ago, and he did not move to stay the order of eviction while this appeal was pending, it seems to us unlikely that he remains in the property. Nevertheless, in the absence of evidence that the eviction order has been enforced, we proceed to the merits of Reed's appeal without addressing the issue of mootness.

days of the entry of the order of withdrawal, the withdrawing attorney shall serve a copy of the order on his client and file proof of such service with the court. Ill. S. Ct. R. 13(c)(4). We observe from the limited record in this case that it appears that Reed's former counsel failed to comply with these requirements. Further, the trial court's entry of judgment against Reed on the same day it allowed his lawyer to withdraw likewise failed to adhere to the Rule's requirements. See Ill. S. Ct. R. 13(c)(2).

¶ 17 Turning to Reed's challenge to the entry of summary judgment, we begin by noting that summary judgment is proper only when "the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 20 (quoting 735 ILCS 5/2-1005(c) (West 2008)). All supporting materials are strictly construed against the movant and in favor of the opposing party. *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49. We review *de novo* an order granting summary judgment. *Nationwide Financial, LP v. Pobuda*, 2014 IL 116717, ¶ 24.

¶ 18 The Forcible Entry and Detainer Act (735 ILCS 5/9-101, *et seq.* (West 2016)) (the Act), limits the availability of relief to a person "entitled to the possession of lands or tenements[.]" 735 ILCS 5/9-102(a) (West 2016). Reed disputes whether Inverse Asset was entitled to possession of the subject property prior to the chancery court's ruling on his motion to vacate the order confirming sale, which did not occur until July 25, 2018, several months after Inverse Asset filed its forcible entry and detainer complaint.

¶ 19 Resolution of this issue begins with the acknowledgment that the chancery court's December 20, 2017 order confirming sale also granted immediate possession of the

subject property to Inverse Asset as of the date of the order. However, Reed timely moved to vacate this order within 30 days on January 19, 2018. See 735 ILCS 5/2-1203(a) (West 2016) (in cases decided without jury, party may move to vacate a judgment within 30 days after entry of that judgment). Significantly, a timely postjudgment motion stays enforcement of the judgment. 735 ILCS 5/2-1203(b) (West 2016). (It is perhaps in anticipation of such postjudgment motions that the Mortgage Foreclosure Act (735 ILCS 5/15-1001 *et seq.* (West 2016)) prohibits the holder of a certificate of sale from pursuing an action to terminate the possession of occupants of the mortgaged real estate who have not been made parties to the foreclosure proceedings until 30 days after the order confirming the sale is entered. 735 ILCS 5/15-1701(d) (West 2016)). Because the chancery court's order granting possession to Inverse Asset was stayed pending resolution of Reed's motion to vacate, it follows that Inverse Asset was not entitled to relief under the Act since it could not show it was entitled to possession of the subject property. Accordingly, we conclude that the court erred in granting summary judgment to Inverse Asset on its forcible entry and detainer action.

CONCLUSION

¶ 20 For the foregoing reasons, we reverse the circuit court's entry of summary judgment in favor of Inverse Asset, vacate the June 18 order of eviction, as amended, and remand for further proceedings in accordance with this decision. We recognize that proceedings on remand are unlikely to change the outcome of this case given that Reed has no apparent right to possess the property, but we cannot ignore Inverse Asset's failure to comply with the requirements of the Act. *Advich v. Kleinert*, 69 Ill. 2d 1, 6, 9 (1977) (holding that because the Act establishes a “special statutory proceeding *** in

1-18-1531

derogation of the common law *** a party seeking this remedy must comply with the requirements of the statute ***.’’) (quoting *West Side Trust & Savings Bank v. Lopoten*, 358 Ill. 631, 637 (1934)).

¶ 21 Judgment reversed, order vacated, and remanded for further proceedings.