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2019 IL App (3d) 180219-U

Order filed April 26, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

JAMES BRANDT and TEENA BRANDT,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiffs-Appellees,)	Peoria County, Illinois.
)	
v.)	Appeal No. 3-18-0219
)	Circuit No. 17-LM-1539
KORY PILES and PRISCILLA ALDRICH,)	
)	Honorable Katherine Gorman Hubler,
Defendants-Appellants.)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court lacked subject matter jurisdiction to consider the merits of the case where plaintiffs did not strictly comply with the statute's notice requirement.

¶ 2 Plaintiffs, James and Teena Brandt, filed a forcible entry and detainer (FED) action against defendants, Kory Piles and Priscilla Aldrich, in case No. 17-LM-1539. Plaintiffs sought a judgment, ordering defendants to vacate plaintiffs' home that defendants contracted to buy but on which they stopped paying. After a trial, the court found for plaintiffs and ordered defendants to vacate the home and pay past-due amounts. Defendants appealed.

¶ 3

FACTS

¶ 4

Plaintiffs and defendants entered into a contract for deed wherein plaintiffs agreed to sell defendants a home located at 2211 North Ellory Road in Peoria, Illinois. The contract provided for monthly payments to be followed by one lump-sum payment for the purchase price, less the monthly installments. Defendants ultimately indicated to plaintiffs that they would not be able to procure financing to make the final lump-sum payment. Defendants signed an extension of the contract calling for increased monthly payments. Defendants fell behind on payments.

¶ 5

Plaintiffs filed a FED action against defendants in Peoria County case No. 17-LM-356. In April 2017, plaintiffs and defendants both signed a judgment order. The order provided that upon satisfaction of all payments, the court would dismiss the case. Defendants contend in their brief that they made all payments due. We presume the court dismissed the case but, regardless, case No. 17-LM-356 is not the subject of this appeal.

¶ 6

Defendants, again, stopped making the monthly payments. Plaintiffs sent defendants two demand notices. On September 16, 2017, plaintiffs sent defendants the first notice giving defendants 14 days to cure. Plaintiffs served defendants with the second notice on October 24, 2017. This notice gave defendants 15 days to cure. On December 5, 2017, plaintiffs filed the second FED action, case No. 17-LM-1539, which is the subject of this appeal. At trial, the court found for plaintiffs. The court ordered defendants to vacate the home and pay rent amounts it found were past due. Defendants appealed.

¶ 7

ANALYSIS

¶ 8

On appeal defendants argue: (1) the extension lacked consideration and defendants signed the extension and April 2017 order under duress and/or fraud, (2) the trial court erred in

its interpretation and application of the April 2017 order, and (3) the trial court lacked jurisdiction to hear the case.

¶ 9 Plaintiffs/appellees did not file a brief in this appeal. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976), creates three options for a reviewing court to resolve a case absent an appellee’s brief: (1) advocating for the appellee if justice so requires, (2) deciding the merits of the appeal if the record is clear and issues easily decided, or (3) reversing the trial court if the appellant’s brief demonstrates *prima facie* reversible error that is supported by the record. We will proceed under the final avenue. *Id.*

¶ 10 Defendants raise the issue of jurisdiction for the first time on appeal. It is always the duty of the court to consider jurisdiction. *City of Marseilles v. Radke*, 287 Ill. App. 3d 757, 761 (1997). Because jurisdiction is a threshold issue, we address it first.

¶ 11 A court must have jurisdiction of the subject matter of the litigation in order for its judgment to be valid. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986). Subject matter jurisdiction is the power of the court to hear a case. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). We review the presence or absence of subject matter jurisdiction *de novo*. *Keller v. Walker*, 319 Ill. App. 3d 67, 70 (2001).

¶ 12 The FED Act outlines the necessary steps to confer the trial court with subject matter jurisdiction to hear these cases. *The Courts of Northbrook Condominium Ass’n v. Bhutani*, 2014 IL App (1st) 130417, ¶ 26. It provides as follows:

“In case there is a contract for the purchase of such lands *** the demand shall give the purchaser under such contract *** at least 30 days to satisfy the terms of the demand before an action is filed.” 735 ILCS 5/9-104.1(a) (West 2010).

To confer subject matter jurisdiction on a court, a plaintiff must serve a demand notice. *Id.* Notice must include “at least 30 days to satisfy the terms of the demand before an action is filed.” *Id.* A FED action is a statutory proceeding in derogation of the common law. *Nance v. Bell*, 210 Ill. App. 3d 97, 99 (1991). A written demand “must be made in strict compliance with the statute” or jurisdiction will not attach. *American Management Consultant, LLC v. Carter*, 392 Ill. App. 3d 39, 56 (2009). In *Carter*, the court observed that although the defendant actually received notice of the plaintiff’s FED action, the plaintiff did not strictly comply with the statute in serving notice. *Id.* at 58. The plaintiff was therefore not entitled to obtain relief from the trial court. *Id.*

¶ 13 Plaintiffs gave defendants less than 30 days in both demand notices. Although plaintiffs waited more than 30 days to file the FED action, this fact is irrelevant. Defendants’ brief, with support from the record, demonstrated that plaintiffs failed to strictly comply with the statutory demand notice requirement of section 9-104.1(a) (735 ILCS 5/9-104.1(a) (West 2010)). Therefore, plaintiffs did not confer the trial court with subject matter jurisdiction. See *The Courts of Northbrook Condominium Ass’n v. Bhutani*, 2014 IL App (1st) 130417, ¶ 26; 735 ILCS 5/9-104.1(a) (West 2010). Because the trial court did not have jurisdiction, it did not have authority to hear this action. Its orders are void. Because the trial court lacked jurisdiction, we likewise lack jurisdiction to address any additional issues.

¶ 14 CONCLUSION

¶ 15 For the forgoing reasons, we reverse the judgment of the circuit court of Peoria County and dismiss this appeal.

¶ 16 Circuit court reversed; appeal dismissed.