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2019 IL App (3d) 180273-U

Order filed May 28, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

SELENE FINANCE,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	
)	Appeal No. 3-18-0273
CATHERINE F. KENNEDY and JERRY R.)	Circuit No. 18-LM-89
KENNEDY, JR.,)	
)	
Defendants.)	
)	Honorable Brian E. Barrett,
(Catherine F. Kennedy, Defendant-Appellant).)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err by ordering the eviction of defendant, Jerry Randolph Kennedy, Jr., and the other unknown occupants.
- ¶ 2 Plaintiff, Selene Finance, filed a complaint in forcible entry and detainer against defendant, Catherine F. Kennedy, together with her son, Jerry Randolph Kennedy, Jr., and other unknown occupants of 152 Briarcliff Road, Bolingbrook, Illinois (the premises). Following a

bench trial, the trial court granted plaintiff's request for an order evicting defendant, defendant's son, and the unknown occupants from the premises. Defendant appeals.

¶ 3

I. BACKGROUND

¶ 4

Defendant is allegedly an amnesia victim who passed the premises on a bus, noticed it was vacant, and recalled it was her childhood home.¹ Defendant later discovered the Department of Housing and Urban Development (HUD) owned the premises. Defendant wrote to HUD claiming ownership, then, on April 21, 2016, purported to convey the premises from herself to herself and her son by warranty deed for \$1. The warranty deed was recorded on April 27, 2016.

¶ 5

On January 10, 2018, plaintiff filed a complaint in forcible entry and detainer against defendant. Plaintiff alleged it was entitled to possession of the premises, and that possession was being unlawfully withheld by defendant. Plaintiff attached certain supporting documents to the complaint regarding the chain of title for the premises.

¶ 6

Namely, plaintiff attached a warranty deed, dated April 22, 2002, and recorded in Will County on August 28, 2002, showing Ramon B. and Myriam Caraballo conveyed the premises to Gerald T. and Joan E. LoPiccalo in joint tenancy for \$10.² Plaintiff also attached a warranty deed, dated June 24, 2005, and recorded in Will County on July 26, 2005, showing Gerald T. and Joan E. LoPiccalo conveyed the premises to Charles Metoyer for \$10.

¹Defendant explained, to the best of her recollection, that her family has a longstanding history of owning the premises. According to defendant, her family continuously owned and occupied the premises from as early as 1835 until the 1950s. Around that time, defendant claims her grandmother was killed in a kitchen fire on the premises. Also, defendant alleges she inherited millions of dollars and, despite being only two years of age, entered a partnership with her grandfather to build homes. Defendant states tragedy struck when her family was involved in a double homicide on the premises, which led to the deaths of her father and grandfather. After surviving the tragedy, defendant states she was forced to change her name and move to a distant place, all while "foreign invaders" took her family's homes. Defendant's grandfather allegedly deeded the premises to defendant before his death, but, as admitted by defendant, the original deed is lost. In resolving this case, we do not seek to diminish defendant's deeply held beliefs regarding her family's ownership of the premises. However, her account can only be considered to the extent that it was factually supported in or relevant to the trial court proceedings.

²Defendant stated in her brief that Ramon B. Caraballo was her great uncle.

¶ 7 Further, the attachments to the complaint documented a sheriff's deed, dated August 21, 2013, and recorded in Will County on September 10, 2015. The sheriff's deed indicated the Sheriff of Will County, pursuant to a June 27, 2012, foreclosure judgment entered between Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, L.P., FKA Countrywide Home Loans Servicing, L.P. (Bank of America), and Charles Metoyer, as well as a public sale of the premises on November 28, 2012, conveyed the premises to the secretary of HUD.³ The sheriff's deed stated no right of redemption was made for the premises, as provided by statute.

¶ 8 Further, plaintiff attached a quit claim deed, dated May 9, 2016, and recorded in Will County on July 1, 2016, showing HUD conveyed the premises to Bank of America for \$1. Most relevantly, plaintiff attached a quit claim deed, dated November 3, 2016, showing Bank of America conveyed the premises to plaintiff for \$10. Finally, plaintiff attached a statutory notice and demand for immediate possession, dated September 5, 2017, pursuant to 735 ILCS 5/9-104 (West 2016) of the Code of Civil Procedure (the Code). The notice was posted on the premises' front door and addressed to defendant, defendant's son, and the other unknown occupants.

¶ 9 On February 9, 2018, both parties were present before the trial court. Defendant requested a dismissal of the complaint in forcible entry and detainer, arguing plaintiff filed an inferior quit claim deed after defendant had already obtained ownership of the premises through her warranty deed, dated April 21, 2016. Plaintiff's position was that defendant's warranty deed was fraudulently executed and recorded without actual possession of the premises. Following the informal hearing, the trial court scheduled the case for a bench trial on March 23, 2018, and ordered the parties to exchange discovery within one week.

³See *Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, L.P., FKA Countrywide Home Loans Servicing, L.P. vs. Charles A. Metoyer, et. al.*, No. 12-CH-1134 (Cir. Ct. Will County, June 27, 2012).

¶ 10 Three days later, on February 13, 2018, defendant filed a written motion to dismiss, raising arguments consistent with those presented to the trial court on February 9, 2018. On March 1, 2018, defendant filed an answer to plaintiff’s complaint, again based on similar arguments. Defendant also claimed HUD’s prior conduct effectively released the premises to her before plaintiff secured a quit claim deed.⁴ Defendant filed a motion for a continuance to obtain legal representation, and a second motion to dismiss, on March 19, 2018.

¶ 11 On March 23, 2018, defendant filed a counter-complaint against plaintiff. Attached to the counter-complaint was a “reinstated, copy of original deed, prepared from memory,” which purported to be in compliance with section 15/1 of the Land Patent Act, 765 ILCS 15/1 (West 2018). The “reinstated, copy of original deed,” drafted by defendant, purported to indicate defendant’s grandfather, Frank Caraballo, conveyed the premises to defendant and others in joint tenancy for defendant’s efforts to rehabilitate the kitchen on the premises. In her brief on appeal, defendant also admits “[t]he deeds were lost when [my grandfather] died but I made a copy from memory per 765 ILCS 5/36 ***. I filed an affidavit stating that everything on the deed was true to the best of my ability to remember.”⁵ Also, the bench trial was reset for May 1, 2018.

¶ 12 On April 2, 2018, defendant filed a motion to suppress evidence, requesting that any and all unsupported or unauthenticated documents be barred at trial. On April 13, 2018, defendant

⁴Defendant also argued that, among other things, her constitutional and homestead rights were violated, plaintiff’s quit claim deed was insufficient, and plaintiff committed fraud.

⁵Section 5/36 of the Conveyances Act states: “Whenever upon the trial of any cause in this state, any party to the cause *** shall, orally in court, or by affidavit to be filed in the cause, state under oath that the original of any deed *** which shall have been or may hereafter be acknowledged or proved according to the laws of this State, and which by virtue of any of the laws of this state, shall be required or be entitled to be recorded, is lost, or not in the power of the party wishing to use it on the trial of any such cause, and that to the best of his or her knowledge the original deed was not intentionally destroyed or in any manner disposed of for the purpose of introducing a copy thereof in place of the original, the record of such deed *** or a transcript of the record thereof, certified by the recorder in whose office the same may have been or may hereafter be recorded, may be read in evidence in any court in this state, with like effect as though the original of such deed *** was produced and read in evidence.” 765 ILCS 5/36 (West 2016).

filed a motion for summary judgment, arguing, among other things, there was no evidence to prove the premises belonged to plaintiff, plaintiff's quit claim deed was defective, and plaintiff was barred from owning foreclosed property. Defendant filed a motion for formal written judgment and a motion to amend and supplement discovery on April 27, 2018.

¶ 13 Following a hearing on May 7, 2018, the trial court denied all of defendant's motions. Thereafter, the trial court conducted a bench trial.⁶ During the bench trial, plaintiff presented exhibits to the trial court, evidencing, consistent with the documents attached to its complaint, the chain of title for the premises and the statutory notice and demand for immediate possession posted at the premises. According to plaintiff, defendant moved into the vacant premises, then fraudulently executed and recorded a warranty deed in her and her son's name on April 27, 2016.

¶ 14 Defendant, proceeding *pro se*, objected to plaintiff's exhibits. Defendant claimed the deeds from HUD to Bank of America and from Bank of America to plaintiff were facially defective. Further, defendant argued plaintiff possessed an inferior quit claim deed to her validly executed warranty deed, which was recorded before HUD objected to her claim of ownership.

¶ 15 Following closing arguments, the trial court noted defendant's warranty deed, self-executed on April 21, 2016, was an invalid conveyance and insufficient to prove ownership of the premises. The trial court found plaintiff proved its current ownership of the premises. Thus, the trial court ordered the eviction of defendant, defendant's son, and the other unknown occupants from the premises by May 26, 2018. On May 10, 2018, defendant filed a notice of appeal.

⁶Defendant criticizes the trial court for perceived conflicts and unfairness during the May 7, 2018, pretrial hearing and bench trial. Our careful review reveals that the trial court afforded defendant every opportunity to present her case, as well as demonstrated patience and restraint when faced with defendant's interruptions during the proceedings and outbursts following the judgment.

¶ 16

II. ANALYSIS

¶ 17

Initially, plaintiff has forgone its right to file a brief on appeal. Pursuant to *First Capitol Mortgage Corporation v. Talandis Construction Corporation*, we have “three distinct [and] discretionary options” for proceeding on review, including: (1) if justice requires, advocating for plaintiff or searching the record to sustain the trial court; (2) deciding the merits if the record is simple and the issues can be easily decided; or, (3) reversing the trial court for *prima facie* reversible error that is supported by the record. See 63 Ill. 2d 128, 133 (1976); *Steiner Electric Co. v. Maniscalco*, 2016 IL App (1st) 132023, ¶ 76. In this case, it is appropriate to resolve the issues raised on appeal pursuant to *Talandis’s* second option. The issues on appeal can be easily decided upon review of simple portions of the record. See *Talandis*, 63 Ill. 2d at 133.

¶ 18

The Code’s forcible entry and detainer provisions provide a speedy remedy to those persons entitled to have their possession of certain real property restored. *Wells Fargo Bank, N.A. v. Watson*, 2012 IL App (3d) 110930, ¶ 14; See also 735 ILCS 5/9-101, *et seq.* (West 2018). A “person entitled to the possession of lands” may bring an action in forcible entry and detainer, as to restore his or her rights in the lands, if “entry is made into vacant or unoccupied lands or tenements without right or title.” 735 ILCS 5/9-102 (West 2018). These actions involve limited and distinct proceedings for determining the right to immediate possession of real property, with the plaintiff holding the burden of proof.⁷ *Wells Fargo Bank, N.A.*, 2012 IL App (3d) 110930, ¶ 14; *American Management Consultant, LLC v. Carter*, 392 Ill. App. 3d 39, 56 (2009).

¶ 19

As a result of their limited nature, parties to these proceedings may only raise matters germane to, i.e., closely connected with and relevant to, the issue of possession. *Wells Fargo Bank, N.A.*, 2012 IL App (3d) 110930, ¶¶ 14-15. Serious title disputes usually may not be

⁷A trial court will order the eviction of the defendant if the plaintiff proves its allegations by a preponderance of the evidence. 735 ILCS 5/9-109.5 (West 2018).

determined in forcible entry and detainer actions. *Id.* ¶ 15. However, where, as is true here, a party's claim is based upon title to the property, the trial court may consider ownership germane to the issue of possession. *Jaworski v. Skassa*, 2017 IL App (2d) 160466, ¶ 13; See also *Wood v. Wood*, 284 Ill. App. 3d 718, 722 (1996); *Rodriguez v. Owaynat*, 137 Ill. App. 3d 1017, 1021 (1985); *Kitzer v. Rice*, 90 Ill. App. 2d 72, 77 (1967); *Layzod v. Martin*, 305 Ill. App. 1, 5 (1940).

¶ 20 On appeal, defendant, proceeding *pro se*, challenges the trial court's evidentiary rulings and contends the outcome of the bench trial must be set aside.⁸ Thus, on review, we decide if it was against the manifest weight of the evidence for the trial court to find plaintiff, and not defendant, held a valid deed for the premises. See *In re Estate of Cuneo*, 334 Ill. App. 3d 594, 598 (2002). As alluded to above, the nature of the claims of title by both parties allowed the trial court to consider ownership germane to the issue of possession. See *Wells Fargo Bank, N.A.*, 2012 IL App (3d) 110930, ¶ 15; *Jaworski*, 2017 IL App (2d) 160466, ¶ 13.

¶ 21 Under Illinois law, a deed conveying real property must specify the estate, be in writing, and be signed by the grantor while he or she is not under duress, a minor, or of unsound mind. *City of Virginia v. Mitchell*, 2013 IL App (4th) 120629, ¶ 29; 765 ILCS 5/1 (West 2016). A deed must also be delivered to and accepted by the grantee. *Mitchell*, 2013 IL App (4th) 120629, ¶ 29. If these minimum requirements are met, a deed will effectively pass title. *Id.*

¶ 22 Further, to be considered facially valid in evidence, a deed must be authenticated. *Id.* ¶ 19. Under the Illinois Rules of Evidence, a deed can be self-authenticating if "authorized by law to be recorded or filed and [it is] actually recorded or filed in a public office." Ill. R. Evid.

⁸Defendant claims the trial court: (1) failed to allow, collect, share, or hear all of defendant's evidence; (2) failed to distinguish between quit claim and warranty deeds; (3) incorrectly determined defendant's warranty deed was invalid; (4) incorrectly accepted as valid and admitted into evidence plaintiff's quit claim deed; and, (5) failed to grant defendant's pretrial motions.

902(4) (eff. Jan. 1, 2011). Validity will be presumed if the deed is recorded, but this presumption may be rebutted by clear and convincing evidence of invalidity. *Cuneo*, 334 Ill. App. 3d at 598.

¶ 23 At the heart of this appeal is the question of whether the trial court properly found plaintiff's deeds, and not defendant's deeds, were valid. Here, defendant's "reinstated, copy of original deed" was admittedly "prepared from memory," and lacked a signature from and evidence of delivery by the grantor, Frank Caraballo. Further, defendant's warranty deed was self-executed under the unreasonable and fanciful belief that HUD had released ownership of the premises to defendant. As a result, neither deed could be relied upon by defendant to pass title or as evidence that she held any ownership interest in the premises. Even though defendant recorded her deeds, an examination of those documents rebutted the presumption of validity by clear and convincing evidence.

¶ 24 In contrast, plaintiff documented that its deeds, including the November 3, 2016, quit claim deed, met all the requirements for being a valid deed. The quit claim deed specified the premises, was in writing, and was signed by Bank of America's bankruptcy and bankruptcy-foreclosure managers, as grantors. It is also undisputed that the quit claim deed was delivered by Bank of America and accepted by plaintiff. Moreover, the trial court found plaintiff's deeds were certified, self-authenticating documents. Therefore, the trial court correctly found plaintiff's quit claim deed could pass title and be considered facially valid evidence, establishing plaintiff's right to possess the premises.

¶ 25 As a result, we conclude after our careful review that the trial court did not err by finding plaintiff owned and had a right to possess the premises. Consequently, we affirm the trial court's eviction order.

¶ 26

III. CONCLUSION

¶ 27

The judgment of the circuit court of Will County is affirmed.

¶ 28

Affirmed.