2017 IL App (1st) 163080-U

FIFTH DIVISION
November 17, 2017

No. 1-16-3080

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

WAYPOINT HOMES, INC., as Agent for Owner,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
	)	Cook County
v.	)	
	)	
LAURIE SAMUELS,	)	No. 2016 M1 711914
	)	
Defendant-Appellant	)	
	)	Honorable
(Any and All Known Occupants,	)	Patricia O'Brien Sheahan,
Defendants.)	)	Judge Presiding.
	)	

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County entering an order for possession and awarding damages to the landlord in a forcible entry and detainer action.

¶ 2 Waypoint Homes, Inc., as the agent for an owner of certain residential property (Waypoint), filed a forcible entry and detainer action in the circuit court of Cook County against tenant Laurie Samuels (Samuels). After a bench trial, the trial court entered an order for possession and awarded damages to Waypoint. Samuels contends on appeal that the trial court

lacked jurisdiction because Waypoint did not properly serve the required five-day notice before filing the complaint. She also argues that the trial court erred by denying her jury demand and by "refusing to hear" her motion to dismiss the complaint. For the reasons set forth herein, we affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 Samuels, an attorney, leased a residence in the 9200 block of South Claremont Avenue in Chicago (Property). The monthly rent was $2,162. Waypoint filed a complaint on July 12, 2016, seeking possession of the Property and $5,483 in unpaid rent and damages. The initial summons set a trial date of July 26, 2016. After a sheriff's deputy unsuccessfully attempted to serve Samuels on July 18, 2016, an alias summons was issued and the trial date was reset.

¶ 5 A process server unsuccessfully attempted to serve the alias summons on Samuels at the Property on five different occasions from July 24 through July 29, 2016. He noted that the same vehicle was always parked in the driveway; on one occasion he observed the second-floor windows open and another occasion he possibly heard a television. The process server also attempted to serve Samuels at the law firm listed on the Attorney Registration & Disciplinary Commission website as her registered place of business address. He was unable to serve her at the law firm because she only rented a post office box at that location.

¶ 6 After a second alias summons was issued and the trial date was again rescheduled, the process server unsuccessfully attempted service on Samuels at the Property on three different occasions from August 5 through August 8, 2016. According to the process server, the Property appeared to be empty and a neighbor believed that Samuels had vacated the Property. Waypoint ultimately effectuated service by posting a copy at specified public locations and mailing a copy to Samuels.

¶ 7 Samuels attended a status hearing on August 25, 2016, without counsel. An order entered by Judge John J. Curry, Jr. on that date provided: "Defendant submits herself to the jurisdiction of the Court. Any paperwork, including jury demand, shall be filed by 9/2/16 at 2:00 p.m. or be deemed waived, unless Defendant's counsel appears." The order continued the matter to September 2, 2016, at 2:00 p.m. for trial. Pursuant to an agreed continuance order entered by Judge Curry on September 2, 2016, the matter was continued for trial to September 9, 2016. After the trial, the circuit court entered an order for possession and awarded $10,926.97 to Waypoint. On September 30, 2016, Felicia H. Simmons-Stovall (Simmons-Stovall) filed an appearance and jury demand on behalf of Samuels as well as a motion "to reconsider, rehear and vacate the order for possession" pursuant to sections 2-1203(a) and 2-1401(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1203(a), 5/2-1401(a) (West 2016)).

¶ 8 The motion for reconsideration provided, in part, as follows. On September 1, 2016, Simmons-Stovall contacted the presiding justice's chambers and Waypoint's counsel to request a continuance due to a death in her family, and the agreed continuance order was entered on the following day. On September 9, 2016, Judge Patricia O'Brien Sheahan granted Simmons-Stovall leave to file her appearance *instanter* but denied Samuels leave to file a jury demand. Judge Sheahan inquired whether the parties were ready to proceed, and Waypoint was ready. Simmons-Stovall responded she was not ready, given the language of the August 25, 2016, order. According to Simmons-Stovall, the order which continued the matter from September 2 to September 9, 2016, also continued Samuels' right to file paperwork to September 9, if she appeared with counsel. After questioning the parties, Judge Sheahan commenced the trial.

¶ 9 In the motion for reconsideration, Samuels argued that the trial court abused its discretion by denying her right to a trial by jury. She also asserted that she was denied the opportunity to

answer or plead affirmative defenses to the complaint, engage in discovery, submit evidence to the court and/or call witnesses to testify at trial. Samuels further contended that the "ambiguous" language of the August 25, 2016, order should be construed against Waypoint, as its drafter.

¶ 10 The motion for reconsideration also provided that Simmons-Stovall had requested leave to file a motion to strike and dismiss the complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)). Samuels claimed that the circuit court erred by "failing to hear or denying" her motion, which was "presented" to the circuit court and counsel on the trial date. In the motion to dismiss – which was included as an exhibit to her motion for reconsideration – Samuels contended that the purported failure to properly serve the statutorily-required five-day notice deprived the circuit court of subject matter jurisdiction. In an affidavit in support of the motion to dismiss,[1] Samuels averred, in part, that she never received a notice to terminate tenancy from Waypoint in any manner.

¶ 11 After hearing arguments, the trial court entered a memorandum opinion and order denying the motion for reconsideration. The order provided that "defendant was granted time to file her appearance and jury demand and then granted additional time to prepare for trial." The trial court rejected her arguments regarding the motion to dismiss because "no such motion was filed." Finally, the trial court found that process server Montague Hall (Hall) "testified credibly as to his multiple unsuccessful service attempts between June 7, 2016[,] and his eventual posting of the notice on defendant's door on July 1, 2016." The posting of the five-day notice was deemed "appropriate under the specific facts of this case," given that Samuels "effectively evaded service of both the lease termination notice and the summons and complaint." Samuels filed a timely appeal.

[1] As discussed below, there is no indication that the motion to dismiss and the supporting affidavit were filed with the circuit court, except as exhibits to the motion for reconsideration.

¶ 12 ANALYSIS

¶ 13 Samuels advances three primary arguments on appeal. First, she asserts that the trial court lacked jurisdiction because Waypoint failed to comply with the statutory requirements for service of the five-day notice. Samuels next contends that she was deprived due process where the trial court denied her jury demand and "immediately commenced" the trial. Finally, she claims that the trial court erred in "refusing to hear" her motion to dismiss. Waypoint challenges the foregoing arguments and requests an affirmance. We address the parties' contentions below.

¶ 14 Jurisdictional Challenge

¶ 15 Samuels initially contends that Waypoint did not comply with the requirements of the Forcible Entry and Detainer Act (735 ILCS 5/9-101, *et seq.* (West 2016)) (Act) regarding service of the five-day notice prior to filing its complaint. Section 9-209 of the Act provides that a landlord may notify the tenant in writing that the lease will be terminated unless payment of overdue rent is made within the time stated in the notice, which cannot be less than five days after service. 735 ILCS 5/9-209. Under section 9-211 of the Act, such notice may be served by (i) delivering a copy to the tenant, (ii) leaving a copy with an individual over the age of 13 who resides at the premises, or (iii) sending a copy to the tenant by certified or registered mail, with a returned receipt from the addressee. 735 ILCS 5/9-211. Section 9-211 further provides that if no one is in "actual possession" of the premises, service may be made by posting the notice on the premises. *Id.*

¶ 16 Asserting that she was in "actual possession" of the Property, Samuels argues that the service of the five-day notice by posting did not comply with section 9-211. Citing *Figueroa v. Deacon*, 404 Ill. App. 3d 48, 52 (2010), and *American Management Consultant, LLC v. Carter*, 392 Ill. App. 3d 39, 55-56 (2009), she contends that the circuit court did not have subject matter

jurisdiction over the action based on Waypoint's failure to strictly satisfy the requirements of the Act. "Whether a circuit court has subject matter jurisdiction to entertain a claim presents a question of law which we review *de novo*." *In re Megan G.*, 2015 IL App (2d) 140148, ¶ 20. As discussed below, we reject Samuels' jurisdictional challenge.

¶ 17 Subject matter jurisdiction is defined as the power of a court to hear and determine cases of the general class to which the proceeding in question belongs. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 39. Under the Illinois Constitution adopted in 1870, the circuit court's jurisdiction over special statutory proceedings, *i.e.*, "matters which had no roots at common law or in equity," was derived from the legislature. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc*., 199 Ill. 2d 325, 336 (2002).

¶ 18 In a series of cases referred to as the *Belleville Toyota* cases, the Illinois Supreme Court recognized the effect that the 1964 and 1970 amendments to the Illinois Constitution made to the power of courts to exercise subject matter jurisdiction. See *In re Nathan A.C.*, 385 Ill. App. 3d 1063, 1069 (2008). In *Belleville Toyota*, our supreme court considered whether the failure to comply with a statutory requirement or prerequisite can deprive a circuit court of subject matter jurisdiction. *Belleville Toyota*, 199 Ill. 2d at 335. See also *LVNV Funding, LLC*, 2015 IL 116129, ¶ 33 (discussing *Belleville Toyota*). The *Belleville Toyota* court stated that "[w]ith the exception of the circuit court's power to review administrative action, which is conferred by statute, a circuit court's subject matter jurisdiction is conferred entirely by our state constitution." *Belleville Toyota*, 199 Ill. 2d at 334.

¶ 19 Section 9 of article VI of the Illinois Constitution provides, in part, that the jurisdiction of the circuit courts extends to "all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to the redistricting of the General Assembly and to the ability

of the Governor to serve or resume office." Ill. Const. 1970, art. VI, § 9. The *Belleville Toyota* court thus reasoned that "in order to invoke the subject matter jurisdiction of the circuit court, a plaintiff's case, as framed by the complaint or petition, must present a justiciable matter." *Belleville Toyota*, 199 Ill. 2d at 334.

¶ 20 A justiciable matter is "a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Id.* at 335. "So long as a matter brought before the circuit court is justiciable and does not fall within the original and exclusive jurisdiction of the supreme court, the circuit court has subject matter jurisdiction to consider it." *Megan G.*, 2015 IL App (2d) 140148, ¶ 20.

¶ 21 Based on *Belleville Toyota* and its progeny, we reject Samuels' contention that the circuit court in the instant case lacked subject matter jurisdiction based on any purported failure to strictly comply with the notice requirements of the Act. See also *Prairie Management Corp. v. Bell*, 289 Ill. App. 3d 746, 752 (1997) (determining that the manner of service of the termination notice was not a jurisdictional issue); *Morris v. Martin-Trigona*, 89 Ill. App. 3d 85, 88 (1980) (noting that "[s]ince the adoption of the Judicial Article in 1964 and the subsequent inclusion of that article in the 1970 Constitution," the theory that deviation from the statutory procedure deprived the circuit court of subject matter jurisdiction is no longer valid).

¶ 22 We recognize that – in multiple forcible entry and detainer cases decided after *Belleville Toyota* – the Illinois Appellate Court has held that the circuit court lacked subject matter jurisdiction because "[a]n action to recover possession of a premises is a special statutory proceeding" and "a party seeking this remedy must strictly comply with the requirements of the statute." *American Management Consultant, LLC v. Carter*, 392 Ill. App. 3d 39, 56 (2009).

Accord *Fifth Third Mortgage Co. v. Foster*, 2013 IL App (1st) 121361, ¶ 12; *Figueroa v. Deacon*, 404 Ill. App. 3d 48, 53 (2010). When we review the authority relied upon by the courts in the foregoing cases, their rulings however appear to be directly or indirectly based on cases decided prior to *Belleville Toyota*. *E.g.*, *Carter*, 392 Ill. App. 3d at 56 (citing *In re A.H.*, 195 Ill. 2d 408 (2001), a pre-*Belleville Toyota* case wherein our supreme court held when the power of the circuit court is controlled by statute, the court only has subject matter jurisdiction as provided in the statute). See also *Foster*, 2013 IL App (1st) 121361, ¶ 12 (relying on *Figueroa* and *Avdich v. Kleinert*, 69 Ill. 2d 1 (1977), a pre-*Belleville Toyota* case); *Figueroa*, 404 Ill. App. 3d at 52-53 (relying on *Carter* and *Nance v. Bell*, 210 Ill. App. 3d 97 (1991), a pre-*Belleville Toyota* case).

¶ 23 In sum, the statutory requirements of the Act cannot be jurisdictional, because jurisdiction is conferred on the circuit courts by the Illinois Constitution. As our supreme court has stated, "[w]hile the legislature can create new justiciable matters by enacting legislation that creates rights and duties, the failure to comply with a statutory requirement or prerequisite does not negate the circuit court's subject matter jurisdiction or constitute a nonwaivable condition precedent to the circuit court's jurisdiction." *LVNV Funding, LLC*, 2015 IL 116129, ¶ 37. Since the complaint herein alleged a definite and concrete controversy under the Act, Waypoint established the existence of a justiciable matter. See *Megan G.*, 2015 IL App (2d) 140148, ¶ 22. Accordingly, the trial court had subject matter jurisdiction.

¶ 24 Jury Demand

¶ 25 Samuels next contends that she was denied due process when the circuit court "denied her demand for a jury and immediately commenced [a] bench trial." Both parties herein had the right to have their dispute tried by a jury. 735 ILCS 5/9-108. As provided in *First Bank of Oak Park v. Carswell*, 111 Ill. App. 3d 71, 73 (1982), a defendant in a forcible entry and detainer

action is required to file her jury demand by the time he or she is required to appear.

¶ 26 In the instant case, the trial date changed repeatedly based on Waypoint's inability to serve Samuels. The second alias summons – providing that the trial date was August 18, 2016, at 2:00 p.m. – directed Samuels to file her appearance and pay the required fee "on or before the date and before the time of the trial." A notice prepared by Waypoint's counsel also directed Samuels to appear in person on August 18, 2016, at 2:00 p.m. for trial. The case was subsequently scheduled for a status hearing on August 25, 2016. When Samuels personally appeared on that date, the circuit court entered an order continuing the matter to September 2, 2016, at 2:00 p.m. for trial and providing that "[a]ny paperwork, including jury demand, shall be filed by 9/2/16 at 2:00 p.m. or be deemed waived, unless Defendant's counsel appears." Although Samuels apparently had retained counsel prior to September 2, 2016, no jury demand was filed by that date. Samuels had an ample opportunity to file her jury demand in a timely fashion, but failed to do so.

¶ 27 Citing *Laba v. Hahay*, 348 Ill. App. 3d 69, 71 (2004), Samuels contends that a defendant who desires a jury trial must file a jury demand when the answer is due. The appellate court in *Laba* concluded that "[w]here the trial court extended the time for filing an answer, the request for filing a jury demand could not be untimely." While Samuels argues that this matter is "very much like" *Laba*, we disagree. Unlike in *Laba*, the circuit court herein had entered an order expressly providing that the jury demand must be filed by a specified date and time "or be deemed waived, unless Defendant's counsel appears." The jury demand was not filed – and no attorney appearance was made – by the deadline specified by the court in the instant case.

¶ 28 We further observe that *Laba* involved a negligence action arising from a vehicle collision, not a forcible entry and detainer case. The *Laba* court stated that section 2-1105(a) of

the Code of Civil Procedure (735 ILCS 5/2-1105(a)) provides that a defendant must file a jury demand when the answer is due. However, Illinois Supreme Court Rule 181(b)(2) provides, in part: "In actions for forcible detainer ***, the defendant must appear at the time and place specified in the summons. If the defendant appears, he or she need not file an answer unless ordered by the court." Ill. S. Ct. R. 181(b)(2) (eff. Jan. 4, 2013). As the *Carswell* court observed, since an answer is not required in a forcible detainer case, the defendant is required to file her jury demand by the time she is required to appear. See also *Sawyier v. Young*, 198 Ill. App. 3d 1047, 1051 (1990) (finding that "the appearance date in a forcible detainer action marks the time within which a written answer *** may be filed as a matter of right").

¶ 29 We also reject Samuels' contention that the orders of August 25, 2016, and September 2, 2016, were ambiguous. Simmons-Stovall neither appeared nor filed a jury demand by the 2:00 p.m. deadline on September 2, 2016, as set forth in the August 25, 2016, order. The September 2, 2016, agreed continuance order solely provided that the matter was continued for trial to September 9, 2016. Although Samuels suggests that the language of the two orders has been interpreted in two different ways by the parties, we "will not strain to find an ambiguity where none exists." *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005) (discussing interpretation of insurance policies).

¶ 30 Citing *Hartsock v. Bress*, 40 Ill. App. 2d 66 (1963), Samuels further asserts that she should have been allowed to file a jury demand *instanter* on September 9, 2016. In *Hartsock*, the appellate court concluded that the trial judge in a paternity action should have granted the defendant a jury trial. *Id.* at 69. The *Hartsock* appellate court noted that nothing in the record demonstrated that the grant of a jury trial would have inconvenienced the court or the parties or "prejudiced any rights in any manner whatsoever." *Id.* Unlike in *Hartsock*, Waypoint likely

would have been prejudiced and inconvenienced by Samuels' untimely jury demand and the attendant delay. At a minimum, Waypoint had one or more witnesses at the circuit court on September 9, 2016, in anticipation of a trial. As Samuels has failed to demonstrate the absence of inconvenience to Waypoint or the circuit court, or the absence of prejudice to Waypoint, we conclude that the circuit court did not abuse its discretion in denying Samuels' request to file the jury demand *instanter*. See *Carswell*, 111 Ill. App. 3d at 75. See also *Brown v. Scotillo*, 104 Ill. 2d 54, 59 (1984) (noting that the standard of review for leave to file a late jury demand is whether the trial court abused its discretion).

¶ 31 While Samuels claims that she was unable to properly defend herself due to the rulings of the trial court, the record does not include a transcript or other report of proceedings which would enable us to assess the conduct of the trial. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005) (addressing reports of proceedings). Samuels, as the appellant, bears the burden of presenting a sufficiently complete record of the proceedings at trial to support a claim of error, and we resolve any doubts arising from the completeness of the record against her. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). As she has not met her burden, we turn to the next issue.

¶ 32 Motion to Dismiss

¶ 33 Samuels asserts that the trial court erred in "refusing to hear" her motion to dismiss. We recognize that the trial court has discretion to allow the filing of a late motion to dismiss. *E.g.*, *In re M.K.*, 284 Ill. App. 3d 449, 455 (1996). As the motion to strike and dismiss the complaint in the instant case was never actually filed, we would be hard-pressed to conclude that the trial court abused its discretion. In any event, the motion raised a single argument, *i.e.*, that the circuit court lacked subject matter jurisdiction because of Waypoint's purported failure to comply with the Act regarding service of the five-day notice. As discussed above, we reject this argument.

¶ 34 Trial Court Judgment

¶ 35 Waypoint argues that we should affirm the judgment of the trial court. In determining whether the trial court erred in entering a judgment in favor of a plaintiff in a forcible entry and detainer action, the standard of review is whether the ruling was against the manifest weight of the evidence. *Wendy and William Spatz Charitable Foundation v. 2263 North Lincoln Corp.*, 2013 IL App (1st) 122076, ¶ 27. See also *Battaglia v. 736 N. Clark Corp.*, 2015 Il App (1st) 142437, ¶ 23 (noting that a judgment after a bench trial is generally reviewed under a manifest weight of the evidence standard). A judgment is against the manifest weight of the evidence when an opposite conclusion is apparent or when findings appear to be arbitrary, unreasonable, or not based on the evidence. *Wendy and William Spatz Charitable Foundation*, 2013 IL App (1st) 122076, ¶ 27.

¶ 36 The record on appeal does not include a transcript or other report of the proceedings on September 9, 2016, as noted above. While Samuels contends that she testified and provided documentary evidence during the trial, we are unable to review any testimony and evidence which has not been presented as part of the record. See *Foutch*, 99 Ill. 2d at 391-92.

¶ 37 Samuels has also failed to provide a sufficient record regarding Waypoint's alleged failure to properly serve the five-day notice. We acknowledge that the process server's written representations regarding his attempts to serve the alias summons and complaint in July 2016 arguably suggest that Samuels may have been in "actual possession" of the Property when the five-day notice was previously served by posting on the Property door. However, the record includes no transcript or report of the trial testimony from Hall, Samuels, and/or other witnesses regarding such issue. We are thus unable to determine that the trial court erred in concluding that Samuels had effectively evaded service of the five-day notice and that service by posting

was appropriate. See also *Prairie Management*, 289 Ill. App. 3d at 752 (stating that the methods of service suggested in section 9-211 of the Act are not intended to be exhaustive); *Ziff v. Sandra Frocks, Inc.*, 331 Ill. App. 353, 355 (1947) (discussing predecessor to 9-211; stating that the "statute does not purport to restrict the making of a demand or the service of a notice to the particular methods stated in the statute"). For the reasons discussed herein, we conclude that the judgment of the trial court was not against the manifest weight of the evidence.

¶ 38 CONCLUSION

¶ 39 The judgment of the circuit court of Cook County is affirmed in its entirety.

¶ 40 Affirmed.