

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 230435-U

NO. 4-23-0435
IN THE APPELLATE COURT
OF ILLINOIS

FILED

June 20, 2024
Carla Bender
4th District Appellate
Court, IL

FOURTH DISTRICT

KEITH ROYCE,
Plaintiff-Appellee,
v.
LORNA SULLIVAN and DONALD SULLIVAN,
Defendants
(Donald Sullivan, Defendant-Appellant).

) Appeal from the
) Circuit Court of
) Winnebago County
) No. 18CH652
)
) Honorable
) Lisa Renae Fabiano,
) Judge Presiding.

PRESIDING JUSTICE CAVANAGH delivered the judgment of the court. Justices Steigmann and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Having found, after a trial, that (a) a note purportedly secured by a mortgage on the partnership property was invalid and (b) the mortgage was unproven—findings that are uncontested on appeal—any error the court committed earlier by ordering the release of the partnership property from the mortgage was harmless.

(2) The appellant may not make arguments on behalf of a party who has chosen not to appeal.

¶ 2 Plaintiff, Keith Royce, brought an action in the Winnebago County circuit court to wind up a partnership by selling the partnership property and distributing the sale's proceeds. His partner, Lorna Sullivan, claimed that defendant, Donald Sullivan, had a promissory note from plaintiff and that the note was secured by partnership property. Defendant echoed this claim. Plaintiff then joined defendant in the lawsuit, but defendant would not answer plaintiff's discovery requests. Because of defendant's persistent noncompliance with discovery, he incurred the sanction of being barred from testifying. After a bench trial—in which defendant was allowed only

to make arguments, not present evidence—the court found that the note was invalid on the grounds of undue influence and a lack of consideration. The court further found that not only did the purported mortgage suffer from the same deficiencies, but its very existence was unproven.

¶ 3 Defendant appeals, arguing the circuit court erred by ruling, before the trial, that the partnership property should be released from his purported mortgage and sold (and that any security interest he had would attach to the sale's proceeds). Given the court's findings after trial—findings that defendant does not appear to contest on appeal—this purported error was harmless. He cannot have suffered any harm from the premature release of an invalid note and nonexistent mortgage. Therefore, we affirm the judgment.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff and Lorna Sullivan were in a partnership, and plaintiff brought an action against her to wind up the partnership. The principal partnership asset was the real property at 201 Lawrence Street, Cherry Valley, Illinois.

¶ 6 In his fourth amended complaint, plaintiff added a declaratory judgment action against defendant. Plaintiff sought a twofold declaration: (1) a note he issued to defendant was unenforceable and (2) defendant had no mortgage on 201 Lawrence Street.

¶ 7 At a hearing on January 26, 2022, the circuit court ordered the sale of 201 Lawrence Street.

¶ 8 On February 1, 2022, in a written order, the circuit court ruled as follows:

“4. Any lien or mortgage held by [defendant] or his assigns on 201 Lawrence Street, Cherry Valley, Illinois shall be and is hereby released.

5. After satisfying the first mortgage to Wells Fargo any proceeds from the sale of 201 Lawrence Street, Cherry Valley, Illinois shall be held in [plaintiff's attorney's] trust account until further order of this Court."

¶ 9

On April 18, 2022, the circuit court entered the following order:

"1. The order dated January 26, 2022[,] is clarified in that it does not satisfy or release any claim [defendant] has to the proceeds from the sale of 201 Lawrence Street ***.

2. This specific issue of whether or not [defendant] has held any proper secure interest or note which could be satisfied from the proceeds of the sale of 201 Lawrence Street *** is still pending before this Court.

3. The purpose of the release is to clear the title on the property located at 201 Lawrence Street ***."

¶ 10

An interrogatory from plaintiff to defendant asked, "Do you have any outstanding debt or financial obligations you claim is owed to you from Lorna Sullivan or [plaintiff], including mortgages, promissory notes, or other oral or written contracts?" If the answer was yes, defendant was to provide further details, such as the form of the obligation, the date the obligation was incurred, the amount of the obligation, and the purpose for which the obligation was incurred. Plaintiff also requested defendant to produce documents, including "[c]opies of any and all documents regarding any interest in any real estate Defendant owns or claims with reference to the property located at 201 Lawrence Street."

¶ 11

Defendant failed to respond to plaintiff's discovery requests, even after plaintiff wrote him a letter requesting that he do so. Consequently, plaintiff filed a motion to compel defendant to respond to discovery. On July 7, 2022, the circuit court granted the motion, ordering

defendant to comply with plaintiff's discovery requests within 14 days. The court ruled that if the 14 days passed without defendant's compliance, defendant would be barred from testifying. It appears to be undisputed that the 14-day deadline expired without defendant's compliance.

¶ 12 On December 13, 2022, the circuit held a bench trial, at which, pursuant to the sanction, defendant was barred from testifying.

¶13 After the trial, in an order entered on April 26, 2023, the circuit court found that (1) defendant was an attorney and plaintiff was his client at the time plaintiff issued defendant the note in question and (2) as the product of undue influence in a fiduciary relationship, the note was unenforceable. The court further found that the note was invalid because of a lack of consideration. Likewise, the court declared, “the purported mortgage of [defendant] is invalid and was not presented at trial even though [defendant] claimed at argument that a mortgage existed. Also, the court finds that the purported mortgage did not encumber any partnership property.”

¶ 14 This appeal followed.

II. ANALYSIS

¶ 16 A. Releasing the Note and Mortgage Without Holding a

Hearing on the Question of Whether They Should Be Released

¶ 17 According to defendant, the circuit court “erred in entering an Order releasing Defendant’s note and mortgage without conducting a hearing.” Apparently, the order that defendant means is that of February 1, 2022, which provided that “[a]ny lien or mortgage held by [defendant] *** shall be and is hereby released.”

¶ 18 If, as defendant claims, the order of February 1, 2022, was overhasty and entered without an adequate opportunity for argument, we do not see what difference it makes. Ultimately, after the presentation of evidence at trial—a presentation from which defendant was excluded

because of his own willful noncompliance with discovery (see Ill. S. Ct. R. 219(c)(iv) (eff. July 1, 2002))—the circuit court found that the note and mortgage were invalid and that no mortgage was even offered in evidence. The purported error, therefore, was harmless. See *Central Illinois Electric Services, L.L.C. v. Slepian*, 358 Ill. App. 3d 545, 550 (2005).

¶ 19

B. “Argument of Lora Sullivan”

¶ 20

A section of defendant’s brief is entitled “Argument of Lora Sullivan.” Because Lora Sullivan has not appealed, we lack jurisdiction to consider this argument. See *Pro Sapiens, LLC v. Indeck Power Equipment Co.*, 2019 IL App (1st) 182019, ¶ 63. “[I]t would turn the rules on their head to say that a party can fail to appeal but that its claims could be heard if raised by someone else.” *Id.* ¶ 61.

¶ 21

III. CONCLUSION

¶ 22

For the foregoing reasons, we affirm the circuit court’s judgment.

¶ 23

Affirmed.