2026 IL App (1st) 251339

No. 1-25-1339

First Division
October 13, 2026

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

QUINCY SMITH, Plaintiff-Appellee, v. QUINN SMITH, Defendant-Appellant.	)))))))))))	Appeal from the Circuit Court of Cook County. No. 23 M1 717869 Honorable Gerardo Tristan, Jr., Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Ellis and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's eviction order where defendant presented no defenses germane to the proceeding and the judgment was not against the manifest weight of the evidence.

¶ 2 Defendant-appellant Quinn Smith appeals from an order of eviction entered against her in the circuit court of Cook County on June 6, 2025. For the reasons that follow, we affirm.

BACKGROUND

¶ 3 On November 16, 2023, plaintiff-appellee Quincy Smith, defendant's twin brother, filed a complaint for eviction against defendant, seeking possession only, of property located at 4940 S. East End Avenue, #20, Chicago, Illinois. Attached as an exhibit to the complaint was a copy of the 120-day notice of intent to evict, dated June 11, 2023, indicating that the tenancy would expire on October 31, 2023. Additionally attached was plaintiff's affidavit, wherein he averred that there was "no current lease between the parties with respect to the premises."

¶ 4 Notice to defendant of plaintiff's complaint for eviction was ultimately achieved by posting on January 29, 2024. Defendant entered her appearance on February 28, 2024. In what would be defendant's third motion to dismiss, filed March 28, 2024, she argued that she did not live at the East End property and attached, as an exhibit, a property tax bill addressed to her for a Colfax Avenue address in Chicago.

¶ 5 In his May 29, 2024, response to the motion to dismiss, plaintiff attached as an exhibit a complaint for discrimination filed by defendant in the United States District Court for the Northern District of Illinois, captioned "Quinn Smith v. Barclay Condominium Home Owners' Association." Relevant here, the federal court complaint alleged that plaintiff, Quinn Smith (defendant here), is the owner of "a condominium unit at 4940 East End, Unit 20B in Chicago, Illinois 60615." The federal court complaint additionally alleged that "on or about 2023," plaintiff Quinn and her mother, Odessa Smith, moved into the condominium located on East End Avenue. On July 2, 2024, the circuit court in this case denied defendant's motion to dismiss.

¶ 6 On July 23, 2024, defendant filed her answer, affirmative defenses, and counterclaims against plaintiff. Among the affirmative defenses, defendant asserted that plaintiff had "unclean hands," she was not a "bona fide tenant," and she was a co-owner of the East End property. On July 31, 2024, plaintiff filed a motion to strike and dismiss defendant's affirmative defenses and

counterclaims. Attached as an exhibit to plaintiff's motion was a copy of a quitclaim deed, recorded on February 6, 2018, and that identified plaintiff as the sole owner of the East End property. On September 9, 2024, the circuit court granted plaintiff's motion to strike and dismiss defendant's affirmative defenses and counterclaim.

¶ 7 On September 20, 2024, plaintiff filed an amended complaint in which he added as a defendant "Odessa Smith, aka Odessa Norals." We note, however, that Odessa Smith, who is plaintiff's and defendant's mother, is not a party to this appeal. Defendant filed an answer, affirmative defenses, asserting improper service, and counterclaims, alleging, *inter alia*, breach of warranty of habitability and breach of contract regarding an alleged loan to plaintiff from Odessa Smith and seeking a declaration on non-tenancy. Added as alternatives were claims for retaliatory eviction, unjust enrichment, and violations of Chicago's Residential Landlord and Tenant Ordinance ("RLTO"). On May 5, 2025, with the exception of defendant's claim for violation of the RLTO, the trial court granted plaintiff's motion to strike and deny defendant's affirmative defenses and counterclaims.

¶ 8 Following the close of discovery, the case proceeded to a bench trial that commenced on May 29, 2025, and, by court order, continued on June 6, 2025. At the close of evidence, the trial court entered an order for eviction. Although there is no transcript of the trial proceedings, included in the record is a certified bystander's report, dated December 5, 2025, and signed by the presiding trial judge. See Ill. S. Ct. R. 323 (c) (eff. July 1, 2017).

¶ 9 Briefly, according to the bystander's report, on May 29, 2025, immediately after the court called the case, counsel for defendant stated that his client never lived at the subject property and asserted to the court that it could grant plaintiff an eviction against the condo unit for all known or

unknown tenants. However, plaintiff objected. The court then permitted the parties an opportunity to discuss settlement. No settlement agreement having been reached, the parties proceeded to trial.

¶ 10 Plaintiff first called as a witness Christopher Moore, a process server employed by "It's Your Serve." After being sworn in by the trial judge, Moore testified that he served defendant a 120-day notice. He explained that he knocked on the door of the subject property, defendant answered the door, and he handed her the 120-day notice. Moore identified defendant in court as the person he had served. On cross-examination, Moore testified that when defendant answered the door, he asked who she was, she identified herself, and he then handed her the notice.

¶ 11 Next up to testify was defendant. She stated that she lived at a property on Colfax Avenue in Chicago that she owns with her mother. She never lived at the East End property, and she never signed a lease agreement with plaintiff. Upon being shown a lease agreement (Exhibit A), she stated that it was "a fraudulent lease," on "metadata" and that the signature that appeared on the document was not hers. Further, defendant stated that she never applied to the Illinois Rental Assistance program and that she had never seen the application (Exhibit B). When shown a cashier's check for $2,400 made payable "to Quincy Smith for 2 payments of 1200" (Exhibit C), she acknowledged that the memo on the check stated "Rent," and that she had written the check from her business account in order to receive a "write-off on [her] taxes."

¶ 12 Plaintiff's testimony essentially contradicted defendant's testimony regarding the lease agreement, the cashier's check, and the rental assistance application. On cross-examination, he testified that he and defendant applied for rental assistance because defendant wanted to pay him back some rent payments. He additionally testified that defendant, to whom he had given his proxy with the condominium homeowner's association ("HOA") and management company, was

"fraudulently telling the HOA and Management that she was the owner of the [ ] unit and causing all kinds of problems with the building staff, management and HOA."

¶ 13 Following plaintiff's testimony, trial was recessed until June 6, 2025. Once trial resumed, defendant was again called to testify. Her testimony was essentially the same as that given at the May 29th proceeding.

¶ 14 At the close of the evidence, the trial court recalled the exhibits presented and then recounted the testimony. The court stated that in light of defendant's testimony that she "lied to her bookkeeper to commit fraud on her tax returns," it was hard to believe her testimony. The court stated that all of the evidence indicated that defendant had a tenancy at the property and that the lease had turned into a month-to-month tenancy. The trial judge additionally noted that defendant admitted that she has "a key and fob and access to the subject property" which confirms that she is in possession of the property. The court then granted the eviction.

¶ 15 On June 27, 2025, defendant filed a motion to vacate the court's judgment for possession to which she attached affidavits from herself and from her mother, Odessa Smith. Both affidavits averred that defendant did not live at the East End property. On July 1, 2025, defendant filed a motion to stay enforcement of the eviction order. On July 3, 2025, the court denied defendant's motion for stay, and on July 16, 2025, the court denied the motion to vacate the order of eviction.

¶ 16 Included in the record is a stipulation, signed by the parties and filed in the circuit court on January 16, 2026, which states that the following trial exhibits, *inter alia*, "were approved in the certified bystander's report and were admitted during the proceedings:" "Exhibit A – Lease Agreement between Quinn and Quincy," "Exhibit B – Rental Assistance Program Application," "Exhibit C - $2400 rent Cashier's Check," and "Exhibit D – Text messages Quinn to Quincy."

¶ 17 Defendant filed her notice of appeal on July 17, 2025. We have taken the appeal on defendant's opening brief and the record only. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.,* 63 Ill. 2d 128, 133 (1976) (the reviewing court may take a case on appellant's brief only). For the reasons that follow, we affirm.

ANALYSIS

¶ 18 Here on appeal, defendant essentially contends that there was no trial as there was no competent evidence presented to support the court's judgments. In that regard she argues that no witnesses were sworn in prior to offering testimony, the lease was not admitted into evidence, and plaintiff failed to mark or offer any exhibits into evidence. Next, and seemingly her strongest contention, defendant argues that plaintiff failed to prove the "essential elements necessary to obtain an order of possession."

¶ 19 We begin our analysis with a review of defendant's challenges to procedural errors alleged to have occurred during the "trial." With respect to defendant's argument that no witnesses were sworn in, we note that the bystander's report indicates that Moore was sworn in by the court. The report does not indicate, however, whether the other witnesses, that included plaintiff and defendant, were also sworn.

¶ 20 It is conceivable to us that the bystander's report, unlike a transcript of proceedings, does not reflect verbatim all that was said or done during the proceeding. That said, we also note that the report does not indicate that any objection was made regarding the court's alleged failure to administer oaths to each witness. Thus, we deem any irregularity regarding the administering of oaths to have been forfeited. *Calabrese v. Benitez,* 2015 IL App (3d) 130827, ¶ 17 (failure to voice an objection and to raise the issue in a post-trial motion forfeits the issue on appeal); see 81 Am. Jur. 2d Witnesses § 633 (August 2026 Update) ("any irregularity in failing to swear a witness is

waived where the witness is permitted to testify without an objection being interposed"); *id.* § 634 (although the administration of the oath to a witness is fundamental, absent a timely objection, unsworn testimony is not a nullity).

¶ 21 Although some authorities state that the failure to swear a witness cannot be dismissed as a mere irregularity (*id.* § 633 (August 2026 Update)), our research has found no Illinois case that so provides and defendant has pointed to none. Defendant does, however, cite *Eckel v. MacNeal*, 256 Ill. App. 3d 292 (1993), and asserts that in that case, the appellate court reversed the lower court's eviction order where the trial court failed to swear in any witnesses and no documents were admitted into evidence.

¶ 22 Defendant misperceives *Eckel*, which happens to be a forcible entry and detainer case. There, the issue was whether there had been a trial at all. The court in *Eckel* observed that whether evidence has been heard is an important factor in determining whether a trial or hearing has commenced. *Id.* at 297. Factors supporting the court's conclusion that no trial proceeding had occurred in the case before it included that no witnesses were sworn and no evidence was formally introduced to support the plaintiff's claim of possession. *Id.* Additionally, on the date originally set for trial, the transcript of the proceedings recorded the trial judge inquiring as to whether the defendant wanted a trial and further, that the defendant did not ask for a trial at that time. *Id.* Finding no indicia of a trial proceeding, at all, the court reversed the trial court's judgment. *Id.* at 298.

¶ 23 Here, there clearly was a trial. Following discovery and disposition of a series of motions to dismiss, the trial date was set by the court. The parties appeared for trial on May 29, 2025, as well as on June 6, 2025. On the first day of trial, the trial judge called the case and the attorneys, having been unsuccessful in settlement talks, agreed to proceed with trial. Counsel for each party

made opening statements. Three witnesses took the witness stand and offered testimony, with Moore, according to the bystander's report, having been sworn in by the trial judge. Counsel for plaintiff "submi[tted]" exhibits about which testimony had been given. Following each party's closing argument, the court announced its ruling. Thus, we conclude that unlike in *Eckel*, there was, in fact, a trial in this case, notwithstanding any alleged procedural irregularities.

¶ 24 As with the administration of oaths to the witnesses, the bystander's report makes no indication of any objection to the admissibility of any of the physical exhibits at trial. We first note the parties' stipulation regarding the exhibits in which they agreed that the exhibits were "admitted during the proceedings." Further, as the bystander's report does not indicate either party's objection to the admissibility of any of the exhibits at trial, we deem any objection to have been forfeited for purposes of appeal. See *Babikian v. Mruz,* 2011 IL App (1st) 102579, ¶ 13.

¶ 25 As her final challenge to the trial court's eviction order, defendant contends that the plaintiff failed to prove the necessary elements to obtain an order of possession. Citing to section 9-106 of the Illinois Eviction Act (Act) (735 ILCS 5/9-106 (West 2022)), she argues that because "plaintiff failed to prove who was in possession of the unit at any time and failed to offer any evidence of who is in possession, and consequently if withholding of possession was unlawful, the Court's verdict for possession cannot stand as plaintiff failed to meet his burden of proof."

¶ 26 In Illinois, evictions are governed by the Act. 735 ILCS 5/9-101 *et seq.* (West 2022). The Act sets forth the mechanism for adjudication of possession rights in the trial court (*Perry v. Evanston Young Men's Christian Ass'n*, 92 Ill app. 3d 820, 823 (1981)) and "provide[s] the complete remedy for settling disputes about real property" (*Chicago Transit Authority v. Clear Channel Outdoor, Inc.*, 366 Ill. App. 3d 315, 325 (2006)). Because the Act is in derogation of the

common law, courts must strictly comply with the procedures detailed therein. *First National Bank of Evergreen Park, v. Chrysler Realty Corp*., 168 Ill. App. 3d 784, 791 (1988).

¶ 27 Pursuant to the Act, the standard of proof in an eviction proceeding is preponderance of the evidence. 735 ILCS 5/9-109.5 (West 2022). A preponderance of the evidence is defined as "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it." *Board of Education of Chicago v. Johnson*, 211 Ill. App. 3d 359, 364 (1991). In an eviction proceeding, the facts that must be determined are which party is entitled to immediate possession of the property and whether there is a defense related to the purposes of the Act and that defeats the plaintiff's right to possession. *Milton v. Therra*, 2018 IL App (1st) 171392, ¶ 23; *American National Bank by Metroplex, Inc., v. Powell*, 293 Ill. App. 3d 1033, 1044 (1997) (a forcible entry and detainer action is limited to proceedings that determine the issue of who is entitled to immediate possession); *Miller v. Daley*, 131 Ill. App. 3d 959, 961 (1985) (the purpose of the forcible entry and detainer proceeding is to determine only who should be in rightful possession).

¶ 28 The defendant in a forcible detainer action has the right to assert any germane defenses in response to the plaintiff's possession claim. 735 ILCS 5/9-106 (West 2022); *Circle Management, LLC v. Olivier*, 378 Ill. App. 3d 601, 609 (2007). Generally, claims considered germane to the issue of possession include those that (1) assert a paramount right of possession; (2) deny breach of the agreement vesting possession of the property in the plaintiff; (3) challenge the validity or enforceability of the agreement on which the plaintiff bases the right to possession; and (4) question the plaintiff's motivation for bringing the eviction action. *Avenaim v. Lubecke*, 347 Ill. App. 3d 855, 861 (2004). If the court finds that the allegations in the complaint have been proven, then the court shall enter an eviction in favor of the plaintiff. 735 ILCS 5/9-109 (West 2022).

¶ 29 Defendant correctly asserts that the standard of review of challenges to the trial court's rulings after a bench trial is whether the court's judgment is against the manifest weight of the evidence. *Northwestern Memorial Hospital v. Sharif*, 2014 IL App (1st) 133008, ¶ 25. The court's decision will be found to be against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary or not based on the evidence. *Wendy & Will Spatz Charitable Foundation v. 2263 North Lincoln Corp.*, 2013 IL App (1st) 122076, ¶ 27. "In a bench trial, it is the function of the trial judge to weigh the evidence and to make findings of fact and we will not substitute our judgment for that of the judge, as finder of fact." *Falcon v. Thomas*, 258 Ill. App. 3d 900, 909 (1994).

¶ 30 Here, the trial court heard the testimony of the witnesses and resolved any conflicts of fact. The court had before it a lease agreement, signed by the parties and which identified plaintiff as the landlord, a copy of a rental assistance application, and a cashier's check for $2,400 that indicated that the check was for "rent." At trial, defendant asserted that she did not live at the property and that she was not a tenant. However, the trial judge stated that it was difficult to believe her testimony in light of her statement that she had attempted to receive a tax break by writing the rent check from her business account. We note in that regard a copy of the complaint filed in the federal district court in which defendant identifies herself as the owner of the East End property.

¶ 31 At trial, defendant offered nothing to refute plaintiff's right to possession. We note in that regard the copy of the quitclaim deed identifying plaintiff as the sole owner of the East End property. Defendant's affirmative defenses having been stricken at the pleading stage, her only defense at trial was that because she did not live at the East End property, she could not be dispossessed of the same. Even accepting that defendant did not physically reside at the property, she may have nonetheless been entitled to do so either pursuant to a written or oral lease agreement

or as an unknown occupant. Evidence of an additional residence would not alter that fact. Moreover, the only issue to be determined at trial was whether plaintiff's right to possession of the property was superior to that of defendant's. Whether defendant physically resided at the property was not germane. See *Oak Park Trust & Savings Bank v. Village of Mt. Prospect*, 181 Ill. App 3d 10, 23 (1989) (only matters germane to the purpose of a forcible entry and detainer claim may be introduced). On a final note, here on appeal, defendant raises no claims of error with respect to the trial court's disposition of any of her other asserted "affirmative defenses" or counterclaims. Thus, we deem any claims thereon to have been forfeited.

¶ 32 Based upon this record, we find that plaintiff met his burden of proof and that the court's judgment was not against the manifest weight of the evidence.

CONCLUSION

¶ 33 The judgment of the circuit court of Cook County is affirmed.

¶ 34 Affirmed.