

**NOTICE**  
Decision filed 08/31/21. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2021 IL App (5th) 170409-U

NO. 5-17-0409

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**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).

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ROY WAGONER,	)	Appeal from the
	)	Circuit Court of
Plaintiff and Counterdefendant-Appellee,	)	Randolph County.
	)	
v.	)	No. 17-LM-79
	)	
BETTY BRUNS,	)	Honorable
	)	Richard A. Brown,
Defendant and Counterplaintiff-Appellant.	)	Judge, presiding.

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JUSTICE CATES delivered the judgment of the court.  
Presiding Justice Boie and Justice Barberis concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court erred in granting possession of the mobile home to plaintiff without making findings regarding the circumstances surrounding the intent to transfer title. The judgment of the trial court is vacated, and the cause is remanded for a new trial.
  
- ¶ 2 The plaintiff, Roy Wagoner, acting *pro se*, filed a forcible entry and detainer (eviction) action seeking possession of a 1991 Patriot mobile home located on the property of the defendant, Betty Bruns, along with a claim for rent in the amount of \$1650. The defendant filed an answer denying the plaintiff’s claims and a counterclaim for replevin. Following a bench trial, the trial court entered an order in favor of the plaintiff and dismissed the defendant’s counterclaim. The court awarded the plaintiff

possession of the mobile home, denied the request for rent, and allowed the plaintiff to go onto the defendant's property to detach the mobile home from a garage. On appeal, the defendant claims that the trial court erred in failing to consider whether she had the mental capacity or intent to transfer title of the mobile home to the plaintiff and in awarding possession of the mobile home to the plaintiff. The defendant also claims that the trial court erred in assisting the plaintiff in presenting his case-in-chief. For the following reasons, we vacate the judgment of the trial court and remand the cause for further proceedings.

¶ 3 The subject of this dispute is a 1991 Patriot mobile home (mobile home) located on the defendant's property in Steeleville, Illinois. The defendant and her husband had resided on that property for more than 50 years. At some point prior to November 2016, the defendant and her husband obtained the title to the mobile home jointly, and they moved it onto their property. Sometime after the defendant's husband passed away, the defendant was advised to remove her husband's name and to retitle the mobile home into her name alone.

¶ 4 The defendant and her husband also owned a second property next to the home of the plaintiff's mother, and so they became acquainted with the plaintiff. Over the years, the plaintiff helped the defendant's husband make repairs to their property.

¶ 5 In late 2016 or early 2017, a dispute arose between the plaintiff and the defendant over title and possession of the defendant's mobile home. The plaintiff claimed that the defendant had signed the title to the mobile home over to him in November 2016. When the defendant refused to move her belongings from the mobile home, the plaintiff served

a notice on the defendant to vacate the premises. At that time, the defendant was a 79-year-old widow, and her son was gravely ill in a nursing home.

¶ 6 On July 18, 2017, the plaintiff filed a *pro se* complaint for forcible entry and detainer. The plaintiff alleged that the defendant was unlawfully withholding possession of the mobile home from him. The plaintiff also claimed that the defendant owed past due rent in the sum of \$1650. The defendant filed an answer denying the plaintiff's allegations and a counterclaim for replevin.

¶ 7 A bench trial commenced on October 3, 2017. The plaintiff appeared *pro se*. The defendant was represented by counsel. After introducing the parties, the trial court invited the plaintiff to present evidence in support of his complaint. The plaintiff responded, saying he thought he "proved everything already." The court placed the plaintiff under oath and directed him to take a seat on the witness stand. The court then assisted the plaintiff through his direct testimony by questioning the plaintiff.

¶ 8 In response to the court's questioning, the plaintiff testified that the defendant had given him title to the mobile home located on her property and that he had filed a complaint for possession because the defendant moved back into the mobile home after title transferred. The parties stipulated to a copy of the title, and it was admitted into evidence. The plaintiff further testified that defendant's signature was on the title in two places; her signature was on the title as the seller and as the buyer. The plaintiff testified that on November 22, 2016, when he presented the title to the Secretary of State, the title was not accepted as signed. The plaintiff was advised that he needed to submit an additional form to correct the signature error. On that same day, the plaintiff returned to

the defendant's home with documents he received from the Secretary of State's office and then he again submitted documents for title transferred out of defendant's name. The plaintiff testified that the defendant signed the title over to him as compensation for the years of work he had done on the defendant's home. The plaintiff stated that he never charged the defendant or her husband for the work, but he had received some compensation from them over the years for his help. The plaintiff acknowledged that the parties had not entered into a written agreement for the transfer of the mobile home. The plaintiff also acknowledged that the parties did not have a rental agreement. He believed that the defendant should pay him rent because she moved into the mobile home without his permission. The plaintiff did not do any research into the fair market value for a rental property in the area, but he believed that \$650 a month was a fair value for the time the defendant continued to occupy the premises. No foundation was offered for the plaintiff's opinion testimony regarding the fair market value of the rental due for the trailer.

¶ 9 Following the plaintiff's testimony, the defendant presented her case. The defendant testified that after her husband passed away, she wanted to remove his name from the mobile home title. When she went to transfer title into her name, she was informed that she would need to provide a copy of her husband's death certificate. Sometime thereafter, the plaintiff was visiting with the defendant at her home. The defendant recalled that during the visit, she discussed her intent to transfer the title of the mobile her into her name. The defendant testified that she never had the intent to transfer title of the mobile home to the plaintiff and that she never owed him any money. She also testified that she never had an agreement with the plaintiff to transfer the title as

compensation for any work he performed, and any work he performed in the past was at the direction of her deceased husband and her in-laws. The plaintiff did not remember signing any documents to transfer title to plaintiff. She believed her title was missing. The plaintiff testified that she was dealing with stress related to her disabled son's health during the time the title was transferred into the plaintiff's name. Throughout her testimony, the defendant exhibited some confusion regarding dates and timelines.

¶ 10 At the conclusion of the evidence, the trial court announced its decision from the bench. The court found that the plaintiff was in possession of a certificate of title issued by the Secretary of State showing ownership, and that the defendant was unlawfully withholding possession of that property. The court denied the defendant's replevin counterclaim but made no specific findings on the issue of intent to transfer raised by the defendant. The court also found that the plaintiff did not prove an amount due for rent.

¶ 11 Before the court had completed the written order, the defendant's counsel sought to clarify the court's ruling. Counsel noted that the title covered only the mobile home. Counsel informed the court that a garage was affixed to the mobile home. The record indicates that the court then engaged the parties in a discussion regarding the removal of the mobile home from an attached garage on the defendant's land. Without a request by either party to reopen the proofs, the court inquired about the garage, how the garage was attached, and whether the mobile home could be detached. Prior to this discussion, there had been no sworn testimony or other evidence admitted regarding a garage at the premises. During the discussion with the parties and defendant's counsel, the plaintiff asserted an interest in the garage as well as the mobile home. The defendant voiced

concerns that the garage would be destroyed if the mobile home was removed from the land. Following the discussion, the court indicated that it would permit the plaintiff to go onto the defendant's property to remove the mobile home. In a written order entered that day, the court entered a judgment for the plaintiff, awarding him possession of the mobile home and directing the defendant to give up possession by October 24, 2017. The October 3, 2017, order included a handwritten order that "Plaintiff may go upon the premises of defendant to detach the mobile home from the garage and remove mobile home from premises."

¶ 12 On appeal, the defendant claims that the trial court failed to consider whether she had the mental capacity or intent to transfer title of the mobile home to the plaintiff. The defendant argues that the court erred in awarding the mobile home without considering the circumstances surrounding the alleged assignment of the title to the mobile home and the issue of intent to transfer. The defendant also claims that the trial court erred in assisting the plaintiff in presenting his case-in-chief.

¶ 13 A forcible entry and detainer action (eviction)<sup>1</sup> action is a summary proceeding that is limited to the issue of immediate possession of the premises, and questions of ownership may not need to be decided. *Continental Illinois National Bank & Trust Co. of Chicago v. Wilson*, 103 Ill. App. 3d 357, 360 (1982). However, matters germane to possession may be raised by way of a counterclaim in an eviction action. *Rosewood Corp. v. Fisher*, 46 Ill. 2d 249, 255 (1970). Although ownership need not be decided in

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<sup>1</sup>Effective January 1, 2018, the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.*) was renamed the Eviction Act, replacing "forcible entry and detainer" with "eviction" throughout the Act.

an eviction, it may be considered when a party's claim to possession is based on title. *Jaworski v. Skassa*, 2017 IL App (2d) 160466, ¶ 13. Where, as here, the claim for possession is based on title, the issue of ownership is germane to the issue of possession. *Jaworski*, 2017 IL App (2d) 160466, ¶ 13.

¶ 14 To determine the intent of an oral assignment, the law requires scrutiny of the surrounding circumstances, and it is necessary to ascertain the intention of the parties. *Buck v. Illinois National Bank & Trust Co.*, 79 Ill. App. 2d 101, 106 (1967). The intent of the parties to an assignment is a question of fact that should be derived not only from the instrument executed by the parties, but also from the surrounding circumstances. *Young v. Chicago Federal Savings & Loan Ass'n*, 180 Ill. App. 3d 280, 283 (1989).

¶ 15 In this case, the trial court was called upon to determine factual disputes regarding the intent to transfer the title and the right to possess the mobile home. A trial judge sitting as the trier of fact is limited to the record developed during the trial before him and is presumed to have considered only admissible evidence. *People v. Jackson*, 409 Ill. App. 3d 631, 647 (2011). During the trial, the parties presented evidence of the title to the mobile home, as well as the circumstances surrounding how the title was transferred. There was no evidence or any reasonable inference that a garage had been affixed to the mobile home. During a discussion that occurred after the evidence had closed and the court had announced its rulings, the court learned that there was a garage possibly affixed to the mobile home. This was a circumstance that had some bearing on the issue of the defendant's intention to transfer the title to the mobile home. Accordingly, the proofs should have been reopened so that the parties could have presented additional testimony

regarding whether and when the garage was affixed to the mobile home, and whether it was feasible to detach the mobile home from the garage. While a motion to reopen proofs is usually made by one of the parties, the trial court may take such action on its own motion where a sound basis for the action appears in the record. *In re Al. P.*, 2017 IL App (4th) 170435, ¶ 48. Although no evidence was presented regarding the attached garage during the trial, the court entered an order on October 3, 2017, permitting the plaintiff to detach the garage from the mobile home. Thus, the court's ruling was outside the scope of what was presented during the trial. Furthermore, the additional issue of both parties claiming ownership to a garage that may or may not be a fixture, without reopening proofs, raises further questions about the defendant's intent to transfer the mobile home or the extent of that transfer.

¶ 16 The party asserting its right to possession bears the burden of proof and must establish its right to possession by a preponderance of the evidence. *Circle Management, LLC v. Olivier*, 378 Ill. App. 3d 601, 609 (2007). Since the proofs were not reopened, the record was not sufficiently developed to allow for a full determination of the issues of title and possession. The intent to transfer issue was not resolved, rather, the discussion after the close of testimony raised additional surrounding circumstances to consider. *Buck*, 79 Ill. App. 2d 101. Under the unique circumstances presented in this case, the trial court's judgment must be vacated and the cause remanded for a new trial.

¶ 17 On remand, the plaintiff must be prepared to present his evidence of his own accord, without the level of assistance that the trial court provided during the initial trial. As a general proposition, it is never improper for a trial judge to aid in bringing out the



truth in a fair and impartial manner, but the judge must not assume the role of an advocate. *In re Al. P.*, 2017 IL App (4th) 170435, ¶ 48.

¶ 18 For the foregoing reasons, we vacate the judgment of the court and remand for a new trial to determine the intent to transfer title of the subject property.

¶ 19 Vacated and remanded.