

2022 IL App (1st) 210719-U
No. 1-21-0719
Order filed November 23, 2022

Third Division

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

HELGA BUOL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 M1 709430
)	
JOSEPH RIVAS,)	Honorable
)	David A. Skryd,
Defendant-Appellant.)	Judge, presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order denying defendant's motion to seal the court file for an eviction action is vacated and the cause is remanded. The trial court is directed to grant the motion and seal the file pursuant to section 9-121.5(b) of the Forcible Entry and Detainer Act (735 ILCS 5/9-121.5(b) (West Supp. 2021) (added by Pub. Act 102-0005)).

¶ 2 Defendant Joseph Rivas appeals *pro se* from the trial court's denial of his motion to seal the court file for an eviction action pursuant to section 9-121 of the Forcible Entry and Detainer

Act (Act) (735 ILCS 5/9-121 (West 2020)). On appeal, defendant contends that the trial court abused its discretion when the motion met the Act's requirements. For the following reasons, we reverse the trial court's order and grant the motion to seal as it met one of the statutory elements of section 9-121.5(b) of the Act.¹

¶ 3 On May 7, 2009, plaintiff Helga Buol filed a forcible entry and detainer complaint against defendant seeking possession of a unit in a building on the 1600 block of West Roscoe Street in Chicago. Defendant, appearing *pro se*, filed a motion to dismiss alleging, in relevant part, defective service, "psychological" framing, and political corruption.

¶ 4 On August 25, 2009, the trial court entered an order stating that the parties agreed in open court that defendant would remove all personal property from the unit, participate in a walkthrough, and return the keys by 4:30 p.m. on August 27, 2009.

¶ 5 On October 5, 2009, the trial court entered an order finding, relevant here, that defendant surrendered the unit to plaintiff, who received possession on August 28, 2009. According to the order, plaintiff asserted that she would not bring criminal charges for property damage or any claim of stolen property through October 5, 2009, and would not seek to recover for damage to property through that date. The court dismissed the case with prejudice.

¹ Although defendant's motion to seal was filed pursuant to section 9-121 of the Act, and he references section 9-121(b) of the Act in his *pro se* brief, the provision in effect at the time of the hearing on the motion to seal was actually section 9-121.5(b) of the Act. See *Fernandez v. Smith*, 2022 IL App (1st) 210728-U, ¶ 56 (determining that the legislature intended to substitute section 9-121.5 for section 9-121 from the effective date of Public Act 102-0005, May 17, 2021, to August 1, 2022); see also Ill. S. Ct. R. 23(e)(1) (eff. Jan. 1, 2021) (nonprecedential Appellate Court orders entered on or after January 1, 2021, may be cited for persuasive purposes).

¶ 6 Defendant thereafter filed several *pro se* emergency motions seeking contact information for a witness. On October 13, 2009, the trial court held a hearing on “oral representations” made by defendant, and again dismissed the case with prejudice.

¶ 7 On December 7, 2020, defendant, represented by Beyond Legal Aid, filed a motion to seal the court file for the 2009 eviction action pursuant to section 9-121 of the Act. The motion alleged that no judgment was entered against defendant, and that plaintiff “essentially admitted” that the cause lacked a basis in fact or law by agreeing to dismiss the case with prejudice.

¶ 8 On December 9, 2020, Beyond Legal Aid filed a motion for leave to withdraw as counsel, alleging that the attorney-client relationship had broken down. Defendant filed a *pro se* motion opposing the motion to withdraw and requesting an evidentiary hearing.²

¶ 9 On April 29, 2021, the trial court granted Beyond Legal Aid’s motion to withdraw over defendant’s objection. The motion to seal was continued.

¶ 10 On April 30, 2021, defendant filed a *pro se* petition for the presiding judge to “excuse himself” or transfer the case. Defendant also stated that plaintiff did not oppose the sealing of the court file for the eviction action.

¶ 11 On May 20, 2021, the trial court held a videoconference on the motion to seal the court file in this case, as well as defendant’s motions to seal the court files in eviction case numbers 06 M1 731631 and 07 M1 1726547. YMCA, as named plaintiff in case numbers 06 M1 731631 and 07 M1 1726547, appeared through counsel and defendant appeared *pro se*. Plaintiff in the present case did not appear.

² The caption of the motion bore the correct case number, but identified “Young Men’s Christian Assoc.,” rather than Buol, as the plaintiff.

¶ 12 YMCA's counsel argued that the motions to seal in case numbers 06 M1 731631 and 07 M1 1726547 should be denied because defendant had not "demonstrated an actual pertinent or *** rational reason to seal."

¶ 13 Defendant asked for a continuance in order to obtain an attorney, which the trial court denied. Defendant also asked that the court rule on his motions for substitution of judge or transfer the cause for such a hearing. The trial court declined, as the only issues before the court were the motions to seal.

¶ 14 In denying all three motions to seal the court files, the trial court stated that it reviewed the "history" of the cases, which involved "extensive litigation" over "a period of years," as well as the court filings, the arguments of the parties, and the "responses" of YMCA's attorney. The court also stated that it reviewed the motions filed by defendant's former counsel, and that the court's "consideration" was the "underlying fact that there is access to public records." Therefore, "any records that are kept by the Clerk of the Circuit Court in Cook County, people have a right to access" which is "key to a transparent judiciary."

¶ 15 The court's order states, relevant here, that "all documents kept by the clerk of court's office are public records to which the public is entitled free access." Moreover, "[s]ealing this court file would seriously undermine the tradition of an open judicial system."

¶ 16 On June 1, 2021, defendant filed a *pro se* document titled "Motion for Reconsideration PENDING APPEAL" of Beyond Legal Aid's motion to withdraw as counsel and "Motion for this Motion for Reconsideration" to be ruled on by a different judge, requesting, in pertinent part, that the court grant the motion to seal. Defendant thereafter filed additional *pro se* motions for substitution of judge. On June 16, 2021, the trial court denied all of defendant's motions.

¶ 17 On June 21, 2021, at 3:54 p.m., defendant filed a *pro se* notice of appeal from the May 20, 2021, denial of the motion to seal.³ That same day, at 4:21 p.m., defendant filed a *pro se* motion for reconsideration of the denial of the motion to seal.⁴

¶ 18 On appeal, defendant alleges that the trial court abused its discretion in denying the motion to seal when the court file for the eviction case qualified for sealing pursuant to section 9-121(b) of the Act.⁵

¶ 19 On August 18, 2022, we entered an order taking this appeal on defendant's brief only. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (allowing consideration of appeal on appellant's brief only where the record is simple and errors can be considered without additional briefing).

¶ 20 As noted, on December 7, 2020, defendant filed through counsel a motion to seal the court file for the eviction case pursuant to section 9-121 of the Act. On May 17, 2021, prior to the entry of the trial court's order denying the motion, Public Act 102-0005 went into effect. See Pub. Act

³ Although defendant's *pro se* notice of appeal states that he appeals from the May 20, 2021, judgment, and did not mention the denial of the June 1, 2021, motion seeking reconsideration of denial of the motion to seal, the appeal was timely. Defendant's appeal from the May 20, 2021, order was due on Saturday, June 19, 2021. See Ill. S. Ct. R. 606(b) (eff. Mar. 12, 2021) ("the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from"). The *pro se* notice of appeal filed on Monday, June 21, 2021, was therefore timely. See 5 ILCS 70/1.11 (West 2020).

⁴ The record on appeal does not reflect that the trial court ruled on the motion to reconsider. The common law record ends with the filing of that motion. Defendant states in his *pro se* brief that on August 27, 2021, the trial court found it lacked jurisdiction to consider his *pro se* motion for reconsideration. See *Tuna v. Airbus, S.A.S.*, 2017 IL App (1st) 153645, ¶ 25 (the filing of a notice of appeal divests the circuit court of jurisdiction); Ill. S. Ct. R. 274 (eff. July 1, 2019) ("A party may make only one postjudgment motion directed at a judgment order that is otherwise final and appealable."); *Parker v. Liberty Underwriters, Inc.*, 2022 IL App (1st) 200812, ¶¶ 24-25.

⁵ The trial court's rulings in case numbers 06 M1 731631 and 07 M1 1726547 are not at issue in this appeal.

102-0005, § 99-99 (eff. May 17, 2021) (stating the public act takes effects “upon becoming law”).

Public Act 102-0005 amended section 9-121 of the Act and introduced section 9-121.5.

¶ 21 Section 9-121 of the Act was amended with the addition of subsection (d). 735 ILCS 5/9-121(d) (West Supp. 2021) (added by Pub. Act 102-0005 (eff. May 17, 2021)). The amended version of section 9-121 states:

“Sealing of court file.

(a) Definition. As used in this Section, ‘court file’ means the court file created when an eviction action is filed with the court.

(b) Discretionary sealing of court file. The court may order that a court file in an eviction action be placed under seal if the court finds that the plaintiff’s action is sufficiently without a basis in fact or law, which may include lack of jurisdiction, that placing the court file under seal is clearly in the interests of justice, and that those interests are not outweighed by the public’s interest in knowing the record.

(c) Mandatory sealing of court file. The court file relating to an eviction action brought against a tenant under Section 9-207.5 of this Code or as set forth in subdivision (h)(6) of Section 15-1701 of this Code shall be placed under seal.

(d) This section is operative on and after August 1, 2022.” *Id.*

¶ 22 Public Act 102-0005 also introduced section 9-121.5, “Sealing of court file,” which states that:

“(a) As used in this Section, ‘court file’ means the court file created when an eviction action is filed with the court.

(b) The court shall order the sealing of any court file in a residential eviction action if:

(1) the interests of justice in the sealing the court file outweigh the public interest in maintaining the public record;

(2) the parties to the eviction action agree to seal the court file;

(3) there was no material violation of the terms of the tenancy by the tenant; or

(4) the case was dismissed with or without prejudice.

(c) The court file relating to an eviction action brought against a tenant under Section 9-207.5 of this Code or as set forth in subdivision (h)(6) of Section 15-1701 of this Code shall be placed under seal.

* * *

(i) This Section is repealed on August 1, 2022.” 735 ILCS 5/9-121.5(a)-(c), (i) (West Supp. 2021) (added by Pub. Act 102-0005) (eff. May 17, 2021)).

¶ 23 This court has previously determined that section 9-121.5(b) of the Act “uses mandatory language and states that a court ‘shall’ seal the eviction record if any of the specified elements has been met.” See *Fernandez v. Smith*, 2022 IL App (1st) 210728-U, ¶ 53 (quoting *In re M.I.*, 2013 IL 113776, ¶¶ 16, 21 (“ ‘ “shall” usually *** indicate[s] the legislature intended to impose a mandatory obligation’ ”)); see also Ill. S. Ct. R. 23(e)(1) (eff. Jan. 1, 2021) (nonprecedential Appellate Court orders entered on or after January 1, 2021, may be cited for persuasive purposes).

¶ 24 We also determined that the legislature intended to substitute section 9-121.5 for section 9-121 from the effective date of Public Act 102-0005, May 17, 2021, to August 1, 2022. *Smith*, 2022 IL App (1st) 210728-U, ¶ 56. We found that the sections had the same title and purpose, and that the expressed operative date of each section indicated that they were not operative at the same time. *Id.* Accordingly, section 9-121.5 of the Act was operative from May 17, 2021, to August 1,

2022, the exact time period that section 9-121 of the Act was not. *Id.* Thus, we concluded that section 9-121.5 of the Act governed motions to seal a residential eviction court file which were pending at the time the changes of Public Act 102-0005 became effective. See *id.* ¶ 57 (quoting 735 ILCS 5/9-121.5(b) (West Supp. 2021) (added by Pub. Act 102-0005) (noting section 9-121.5(b) applies to “ ‘any court file in a residential eviction action’ ” and the legislature’s “clear intent that section 9-121.5 governed all motions to seal eviction records pending at the time of its enactment through the time it is repealed”)).

¶ 25 Accordingly, section 9-121.5 of the Act was the operative provision at the time the motion to seal the court file in this case was decided and by its express language, applied to the motion as a pending request to seal a court file in an eviction action. See *Smith*, 2022 IL App (1st) 210728-U, ¶ 57.

¶ 26 Pursuant to the plain language of section 9-121.5(b)(4) of the Act, the trial court “shall order” the sealing of the court file for a residential eviction action if “the case was dismissed with or without prejudice.” 735 ILCS 5/9-121.5(b)(4) (West Supp. 2021) (added by Pub. Act 102-0005). In this case, the 2009 residential eviction action was dismissed with prejudice and therefore meets the requirement of section 9-121.5(b)(4) of the Act.⁶ Accordingly, pursuant to section 9-121.5(b) of the Act, “[t]he court shall order the sealing” of the court file for the eviction action in this case. 735 ILCS 5/9-121.5(b) (West Supp. 2021) (added by Pub. Act 102-0005).

⁶ The record reveals that defendant represented to the trial court that plaintiff did not oppose the motion to seal. See 735 ILCS 5/9-121.5(b)(2) (West Supp. 2021) (added by Pub. Act 102-0005) (the court shall order the sealing of the court file for a residential eviction action if “the parties to the eviction action agree to seal the court file”).

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¶ 27 Section 9-121.5(b) of the Act requires sealing of the court file if, as here, one of the statutory elements of met. See *Smith*, 2022 IL App (1st) 210728-U, ¶ 61. We therefore vacate the trial court's denial of the motion to seal the court file for the eviction case, remand the cause, and direct to trial court to grant the motion.

¶ 28 Vacated; remanded with directions.