

NOTICE
Decision filed 10/07/19. 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.

2019 IL App (5th) 170282-U

NO. 5-17-0282

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

| | | |
|--|---|--------------------------|
| MISTY L. SOLIBEN, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff, |) | Madison County. |
| |) | |
| v. |) | |
| |) | |
| SABRE GROUP LLC, |) | |
| |) | |
| Defendant-Appellee, |) | |
| |) | |
| and |) | Nos. 16-LM-865 and |
| |) | 16-LM-918 (cons.) |
| SABRE GROUP LLC, |) | |
| |) | |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | |
| |) | |
| MICHAEL STOREY, VICKIE L. STOREY, |) | |
| MISTY SOLIBEN, and Unknown Occupants, |) | |
| |) | |
| Defendants |) | Honorable |
| |) | Clarence W. Harrison II, |
| (Michael Storey, Defendant-Appellant). |) | Judge, presiding. |

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet and Justice Boie concurred in the judgment.

ORDER

¶ 1 *Held:* Where the appellant asserts a claim based upon the rights of someone other

than himself, he lacks standing to prosecute this appeal, and the appeal must be dismissed.

¶ 2 Michael Storey (Storey), proceeding *pro se*, appeals from an order in which the circuit court determined the rights and obligations of the seller and the buyer under a contract for the sale of real estate. Storey was neither the seller nor the buyer; he was not one of the contracting parties. In the circuit court, Storey would have lacked standing to sue to enforce the contract. In this court, he asserts a claim based upon the buyer's rights under the contract, not a claim based upon any rights of his own. Therefore he lacks standing to challenge the circuit court's order. Due to the lack of standing on Storey's part, this appeal must be dismissed.

¶ 3 **BACKGROUND**

¶ 4 This appeal is from a judgment entered in two cases that the Madison County circuit court had consolidated. Here follows a summary of both cases.

¶ 5 On August 16, 2016, Misty L. Soliben (Soliben) filed a *pro se* complaint for breach of contract against Sabre Group LLC (Sabre), thus initiating Madison County case number 16-LM-865. On September 21, 2016, Soliben filed in that case a *pro se* amended complaint for breach of contract, which was substantively identical to the original complaint.

¶ 6 In her complaint, Soliben alleged that on October 15, 2013, she and Sabre formed a contract for the sale of the real estate at 1787 Storey Lane in Alton, Illinois. Hereinafter, this contract will be referred to as the "sale contract" and the real estate will be referred to as "the Storey Lane premises" or "the premises." Soliben further alleged that Sabre had failed to abide by the sale contract's terms, and that Sabre was attempting to "extort" her

by refusing to complete the sale unless she paid certain charges that were beyond anything that the sale contract required her to pay. For relief, Soliben sought an order directing Sabre to complete the sale in compliance with the sale contract's terms, plus punitive damages.

¶ 7 Attached to Soliben's amended complaint was a copy of the sale contract. Sabre was the only seller named in the sale contract, and Soliben was the only buyer named therein. The sale contract did not mention Storey. Paragraph 3 of the sale contract stated a purchase price of \$16,674.27, and paragraph 4 required Soliben to make a down payment of \$10,235.41. Under paragraph 2 of the sale contract, Sabre was to provide Soliben with a quitclaim deed upon payment of the purchase price, and Soliben was "responsible for the recording fees and transfer taxes associated with [the parties'] deed along with the purchase of any title insurance, abstract, or formal closing fees [Soliben] may desire." Paragraph 5 of the sale contract fixed a closing date of December 15, 2013. Paragraph 5A, which had the descriptive heading "Financing Contingency," provided that if Soliben was unable to complete the sale contract by the closing date, Sabre would "finance the remaining balance on a 18 month Contract for Deed at 6.50% interest." Under paragraph 7, Soliben was to pay "2012 real estate taxes payable in 2013 and any subsequent real estate taxes." Sabre and Soliben signed the sale contract on October 15, 2013.

¶ 8 On August 25, 2016—nine days after Soliben filed her original complaint for breach of contract against Sabre—Sabre filed a complaint for forcible entry and detainer against Soliben, Storey, Vickie L. Storey, and "unknown occupants," thus initiating Madison County case number 16-LM-918. Storey is the father of Soliben; he lived on the premises

during the proceedings below. The record does not disclose who Vickie L. Storey is, and there is no other mention of any unknown occupants. Sabre's complaint referenced the sale contract between Sabre and Soliben, and it alleged that Soliben and the other two named defendants had taken possession of the premises. Sabre's complaint further alleged that Soliben had failed to complete the sale contract by the closing date fixed therein; that Sabre, pursuant to the contract-for-deed provision in paragraph 5A of the sale contract, had submitted to Soliben a contract for quitclaim deed, but Soliben had not signed or returned that contract for deed; and that Sabre had served Soliben, Storey, and "Occupants" with a 30-day notice. Sabre sought possession of the premises and, if the court found that a contract for a quitclaim deed existed, a sum of money owed pursuant to that contract.

¶ 9 On September 26, 2016, in both No. 16-LM-865 and No. 16-LM-918, Soliben filed a *pro se* motion to consolidate the two cases. She noted that both cases "concerned the same Plaintiff and Defendant" as well as "the same property" and further noted that the cases would involve the same witnesses and overlapping evidence. The circuit court granted the motion to consolidate, as previously indicated.

¶ 10 In March 2017, an attorney entered her appearance on behalf of both Soliben and Storey in the two consolidated cases. Two months later—on May 11, 2017—Soliben filed, by her attorney, in the consolidated cases, a "motion for specific performance," requesting an order for specific performance of the sale contract, including its contract-for-deed provision in paragraph 5A.

¶ 11 At a hearing on June 29, 2017, the court announced that it would hear evidence and argument regarding the motion for specific performance that Soliben had filed on May 11,

2017. Soliben testified on her own behalf. She was the only witness to testify at the hearing. Soliben confirmed that the sale contract for the Storey Lane premises (plaintiff's exhibit A) stated a purchase price of \$16,674.27 and a closing date of December 15, 2013. She testified that she made the stated down payment of \$10,235.41, but she was unable to pay the balance by the closing date. Soliben's understanding was that if she failed to pay off the balance by the closing date, she and Sabre would then sign a contract for deed, which would give her 18 additional months to pay off the balance, with interest at 6.50%, all pursuant to paragraph 5A of the sale contract. Soliben also believed that under the anticipated contract for deed, she would not be obligated to make monthly payments or to obtain home owner's insurance on the premises. She testified that despite the lack of any mention of insurance in the sale contract, she did in fact purchase home owner's insurance on the premises, but Sabre was not listed as an insured on the policy.

¶ 12 Soliben further testified that when Sabre presented her with a contract for deed, she found that it contained "a bunch of stuff" that had not been included in paragraph 5A of the sale contract, or in any other portion of the sale contract, and about which she had not been warned. Due to the presence of provisions to which she had not agreed, Soliben chose not to sign the contract for deed that Sabre had presented to her. Soliben also did not make monthly payments. If Soliben had signed the contract for deed, it would have been in effect for the 18 months from December 16, 2013, to June 16, 2015.

¶ 13 In March 2015, Soliben continued, Sabre served her with a demand letter (plaintiff's exhibit B). This demand letter stated a payoff amount of \$14,342.07. On June 11, 2015, Soliben deposited with Benchmark Title Company (Benchmark) the sum of \$11,569.23,

which was the amount she thought she owed on the sale contract, including interest. Soliben described this deposit of money with Benchmark as her attempt to pay off the sale contract. It was the only time she deposited money for that purpose; she never deposited any additional funds with Benchmark, due to her uncertainty as to whether the sale would ever go to completion. At the time of the trial, that sum remained with Benchmark, "waiting for closing." According to Soliben, the reason for the lack of a closing was Sabre's "stating that [she] owed insurance and some additional payments that [she] wasn't aware of, and [she] wasn't ready to pay." In July 2015, Soliben sent Sabre a letter (plaintiff's exhibit E) demanding that it comply with the terms of the sale contract and supply her with "a warrantee [*sic*] deed."

¶ 14 Soliben further testified that in July 2016, Sabre served Soliben with a 30-day notice (plaintiff's exhibit C). The 30-day notice stated that "unless payment of \$18,481.55 past due installments, late charges, taxes and insurance are made within 30 days, the Contract for Deed will be terminated." Soliben testified that the \$18,481.55 figure was much higher than the true payoff amount, and she noted that paragraph 5A of the sale contract did not require her to make regular installment payments, let alone to pay late charges, and it did not require her to obtain insurance on the premises. Soliben admitted that she had not paid real-estate taxes to the county treasurer, and knew that Sabre had paid some of those taxes.

¶ 15 On the same date as the hearing—June 29, 2017—the circuit court entered a written order in the consolidated cases, granting in part and denying in part Soliben's motion for specific performance of the sale contract. The court's order directed, *inter alia*, (1) that the \$11,569.23 deposited with Benchmark should be transferred to Sabre within seven days;

(2) that Soliben should pay \$15,529.17 to Sabre within 120 days, subject to Sabre's verifying within 21 days that its insurance payments were solely for insurance for the Storey Lane premises; (3) that if Soliben met her obligations under the court's order, Sabre should convey the premises to Soliben, by issuing a quitclaim deed, and the forcible-entry-and-detainer action should be dismissed; and (4) that if Soliben failed to meet her obligations under the order, "Soliben's claim for specific performance shall be denied with no further claim or rights in the real estate." The order also included a paragraph stating that Storey's interest in the premises "arises between his arrangements with Misty Soliben and [is] subject to the conditions herein" and that Storey "has no rights against" Sabre.

¶ 16 On July 27, 2017, Storey filed a *pro se* notice of appeal from the order of June 29, 2017, thus initiating the instant appeal. (Soliben did not appeal.) Also on July 27, 2017, the attorney who represented Soliben and Michael Storey in the circuit court filed a motion for leave to withdraw as counsel.

¶ 17 ANALYSIS

¶ 18 Storey appeals from the June 29, 2017, order wherein the circuit court determined the rights and obligations of Sabre and Soliben under the sale contract. Storey argues *pro se* that the circuit court erred in its determination of those rights and obligations, especially in regard to insuring the premises. Meanwhile, Sabre argues, *inter alia*, that Storey lacks standing to prosecute an appeal from an order determining the rights and obligations of two contracting parties, neither of whom is Storey. Sabre is clearly correct on this point.

¶ 19 In Illinois, standing requires "some injury in fact to a legally cognizable interest." *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492 (1988). "The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit," and "assures that issues are raised only by those parties with a real interest in the outcome of the controversy." *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999).

¶ 20 Here, Storey did not have a legally cognizable interest in the sale contract. The sale contract, which is part of the record on appeal, was a contract between one seller and one buyer—Sabre and Soliben, respectively. They were the only contracting parties. Storey was not a party to the sale contract; he never claimed to be a party to the sale contract, and any such claim would have been belied by the written terms of the sale contract. Therefore, Storey is here asserting a claim that is based on the rights of Soliben, and not on any rights of his own. Asserting a claim based on some other person's rights does not confer standing. See *Powell v. Dean Foods Co.*, 2012 IL 111714, ¶ 42 (three of the six defendants in a case lacked standing to challenge, on appeal, a particular order entered by the circuit court, for those three defendants were "asserting a claim for relief based upon the rights of [a fourth defendant], rather than asserting their own claims").

¶ 21 CONCLUSION

¶ 22 Just as Storey would have lacked standing to bring an action to enforce the sale contract between Sabre and Soliben, so does he lack standing to prosecute an appeal from the order determining Soliben's and Sabre's respective rights and obligations under the sale contract. Due to the lack of standing on Storey's part, this appeal must be dismissed.

¶ 23 Appeal dismissed.