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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE CITY OF CHICAGO,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 17 M1 403351
)	
MARY GIPSON, OZAY MCNEELY,)	Honorable
AGWU MONG, and all Unknown Owners)	Patrice Ball-Reed,
and Non-Record Claimants,)	Judge, presiding.
)	
Defendants (Agwu Mong, Defendant-)	
Appellant).)	

JUSTICE COBBS delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant’s failure to comply with Rule 307(b) rendered his interlocutory appeal premature and we therefore lack jurisdiction over the matter. Further proceedings conducted after the notice of appeal did not save the appeal and defendant’s arguments are not properly before this court.
- ¶ 2 Following an *ex parte* hearing, the circuit court found that the property at 5415 West Rice Street in Chicago (the “Property”) failed to comply with requirements of the Chicago Municipal Code. The court appointed a temporary receiver to bring the property in

compliance and entered an order to vacate the property. Defendant-Appellant, Agwu Mong, filed a *pro se* motion to vacate the court's order which he later withdrew. On appeal, Mong disputes the propriety of the City's actions under section 11-31-2.1(a) of the Illinois Municipal Code. 65 ILCS 5/11-31-2.1(a) (West 2016). For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

¶ 3

I. BACKGROUND

¶ 4

This appeal arises from the municipal department of the Cook County Circuit Court, cause No. 17-M1-403351 (hereinafter the City v. Mong action) which was consolidated below with cause Nos. 17-M1-402735 (hereinafter the City v. Gipson action) and 17-M1-720338 (hereinafter the Mong v. Selvey action). We will briefly discuss the facts of the other actions as necessary to provide background and context for the present appeal.

¶ 5

A. The Consolidated Complaints

¶ 6

On September 29, 2017, the City of Chicago initiated the City v. Gipson action and filed a complaint alleging that the property suffered from 29 building violations. Citing the Chicago Municipal Code, the complaint detailed, *inter alia*, that since April 24, 2017, numerous defects in the roof, walls, doors, windows, floor, stairs and general maintenance of the building's interior and exterior constituted safety concerns and a public nuisance. Mary Gipson, Ozay McNeely, and any unknown owners and non-record claimants were listed as defendants. The City sought to levy fines against defendants for the violations as provided for in the Chicago Municipal Code. See Chicago Municipal Code § 13-12-020. The City also invoked the Illinois Municipal Code to request temporary and permanent injunctions, the appointment of a receiver, or for the property to be declared abandoned with a judicial deed awarded to the City. See 65 ILCS 5/11-31-1 *et seq.* (West 2014). No further proceedings

were held in this cause until it was transferred to another courtroom and later consolidated with the City v. Mong action.

¶ 7 The City v. Mong action was initiated on November 29, 2017, two months after the City v. Gibson action, when the City filed a complaint alleging that on October 31, 2017, gas service was shut off and neither adequate heat nor hot water were supplied to the tenants at the property. Additionally, the City alleged that the property failed to install and maintain smoke detectors in all of the areas required by the Chicago Municipal Code. The City again named Gipson and McNeely as defendant-owners. However, the name Agwu Mong was handwritten on the complaint as an additional defendant with the designation “Agent of Owner.” The complaint sought identical relief as in the City v. Gipson action and an emergency hearing was set for November 30, 2017.

¶ 8 As would be later revealed, Gipson had passed away on January 18, 2014. Before her death, she lived at the property with her husband McNeely. The property had been deeded to Gipson and McNeely as joint tenants via a quitclaim deed recorded on January 11, 2006.¹ Although McNeely had 100 percent ownership of the property after his wife’s death, McNeely had relocated to Tennessee and claimed no interest in the property. Mong, on the other hand, has held himself out as the property manager and claimed exclusive control over the property since Gipson’s death.

¶ 9 In support of his claim, Mong submitted a notarized document titled “Contract for Property management and Leasing” which read as follows:

“This contract between Ozay Mcneely[sic] and Agwu Mong on this day March 3rd of 2011 is for the property management of 5415 W. Rice Chicago, IL 60644. This contract

¹The City referenced this deed during a hearing as Document 0601146059, but a copy of the deed does not appear in the record on appeal.

also leases the entire 2nd Flr to Agwu Mong as he maintains the property at 5414 W. Rice Chicago Il 60644[.] I Ozay Mcneely[*sic*] along with Mary Gibson[*sic*] reside on the 1st Flr of 5415 W. Rice. All maintenance will be conducted by Agwu Mong and who he delegates for any repairs for the above mentioned property.”

This contract was called into question after McNeely stated he did not recall meeting Mong until 2016. McNeely testified that during this encounter Mong claimed the property belonged to him because he had paid taxes and other expenses. McNeely did not question Mong’s claim and only asked whether he would be required to appear in court. After Mong asserted that McNeely did not have to appear, McNeely did not follow up on the matter. He denied entering any agreement regarding managing or leasing the property and did not receive any receipts from Mong. Furthermore, McNeely believed the property had been vacant and “nobody [was] supposed to be in it.”

¶ 10 According to the submitted affidavits and testimony during various hearings, Mong began renting the property to multiple tenants in 2014. On December 4, 2017, the Mong v. Selvey action was initiated by Mong against one of his tenants, Eddie Selvey, and Selvey’s live-in girlfriend Briana Phillips. Mong filed for forcible detainer to regain possession of the property’s second floor, which Selvey and Phillips had been living in under an oral month-to-month lease. Selvey and Phillips later testified and submitted affidavits in support of the State’s case against Mong for building code violations.

¶ 11 The court consolidated the City v. Gipson and City v. Mong actions on December 21, 2017, with no objections. The motion to consolidate the Mong v. Selvey action was contested, nevertheless, the court granted Selvey’s motion on January 10, 2018.

¶ 12 B. Appointment of the Receiver

¶ 13 Prior to consolidation with the other causes, the City v. Mong action proceeded via emergency hearing on November 30, 2017. The City petitioned the court for the appointment of a limited receiver authorized to board and secure the property, make repairs, restore utilities, enforce tenants to vacate the premises, and offer relocation assistance. A report of the proceedings from this hearing was not included in the record on appeal. However, the court noted in its written order that testimony was taken from Larry Hamilton (a building inspector), John Scott from the Department of Buildings, Selvey and Phillips. Mong was not present at this hearing and the court proceeded *ex parte*. The court entered orders appointing David Feller as a temporary heat receiver empowered to forcibly enter the property in order to carry out the duties requested by the petition. The court also ordered tenants to vacate the premises by February 1, 2018 and set the next court date for February 15, 2018.

¶ 14 According to an affidavit submitted to the court during the *ex parte* hearing, Mong was contacted by an attorney for the City of Chicago three days earlier, on November 27, 2017. Having reviewed the certificate of inspection which formed the basis of the complaint in the City v. Mong action, the attorney reached out to the last known phone number for the property and spoke with Mong. Mong was informed about the City's concerns, *i.e.* the lack of heat, as well as the filing of the complaint, the location and time for the hearing, and the possibility of a receiver being appointed.

¶ 15 C. Motions

¶ 16 According to Mong, he was not made aware of the court's orders until December 4, 2017.² This is the same day that the City mailed a "Notice to Vacate" to the tenants,

²A Summons was issued for Mong to appear in the City v. Mong action on December 4, 2017. However, the summons process server indicated that Mong was served on December 5, 2017, in the hallway of the courthouse at 50 W. Washington.

residents, and occupants of the property informing them of the court's orders and notifying them of the deadline to vacate the premises. In response, Mong immediately filed a *pro se* motion asking the circuit court to vacate the orders entered on November 30, citing Selvey and Phillips' false testimony as the basis for vacation. Hearing on the motion was set for December 14, 2017.

¶ 17 On December 12, 2017, the City filed an emergency motion to expand the receivership based on the affidavits of Selvey and Phillips. The hearing date was combined with Mong's pending motion. A transcript of the proceedings from this date was not included in the record on appeal. The docket entry for that date only indicates "Order on Motion to File Appearance or Jury Demand, Answer or Plead – Allowed" and "Case Set on Case Management Call." Furthermore, the court's written order granted Mong's attorney seven days to file her appearance and leave to amend the *pro se* motion to vacate by December 22, 2018. The court set deadlines for filing the City's response and Mong's reply, but noted that a hearing date would be set at a later date. The court continued the City's emergency motion to December 21, 2017, giving Mong four days to respond and the City an additional two days to file any reply. On the following day, the City filed an emergency motion, seeking consolidation of the City v. Gipson and the City v. Mong actions, and set hearing on the motion for December 21, 2017.

¶ 18 D. December 21, 2017 Hearing

¶ 19 The motion to consolidate was granted by agreement and leave was granted to file the first amended consolidated complaint. A briefing schedule was set and alias summons were issued to the property's tenants. Before addressing the City's pending motion to expand the receivership, the court discussed Mong's notice of interlocutory appeal filed on December

20, 2017. First, the court asked whether Mong would withdraw his motion to vacate which was presumably covering the same subject as his notice of appeal. Mong's counsel responded, "If you say that it needs to be withdrawn, I will because when I looked up the case law, it said nothing in Supreme Court Rule 307." The City argued, without legal citation, that the motion to vacate and the interlocutory appeal could not proceed simultaneously. Therefore, it believed Mong was required to decide which proceeding he would pursue. The court made no ruling on the question raised by the City and asked Mong's counsel for her preference. She stated that she would prefer the motion be entered and continued pending the outcome of the appeal. The court stated, "I'm entering and continuing the motion to vacate, but I set a briefing schedule and she's not going to proceed right now on it." However, after arguments on the motion to expand the receivership³ concluded, the court modified the November 30 orders.

¶ 20 Prior to issuing its order, the court took testimony from Mong and Selvey. The court recounted that it had appointed the receiver on November 30 after hearing the uncontroverted testimony of Selvey, Phillips, and the building inspector that there was no heat at the property. Selvey testified that on November 27, 2017, there was no heat; by December 4, 2017, heat and hot water had been restored. Mong testified that Gipson was deceased, the property was in McNeely's name, and McNeely wished for Mong to continue managing and renting the property. The court was concerned that there was insufficient documentation to determine Mong's actual relationship to the property. The court found the notarized property management and leasing contract questionable and was concerned that none of the utilities were in Mong's name nor was Mong able to provide any receipts from paying property taxes.

³We do not discuss the arguments and evidence presented by counsel on the motion to expand the receivership as the City withdrew its motion on February 15, 2018 and it is not a subject of this appeal.

The court stated, “I need some specific documentation to show that [Mong] has the authority to proceed ***. He needs to pursue getting some bills in his name if he is going to act as the agent for Mr. McNeely. If that is done, then I can stay the receiver”. The court continued the City’s motion to expand the receivership to the next court date to allow Mong time to present proof of his authority to act as property manager.

¶ 21 The court also entered orders continuing the receiver’s limited authorization to act on behalf of the property but rescinded the order requiring the tenants to vacate the premises by February 1, 2018. The court also prohibited Mong from entering the property due to an alleged altercation with Selvey. Mong’s counsel stated that in light of the modified orders, Mong would withdraw his pending motion to vacate contrary to the earlier discussion of continuing the motion pending the outcome of the interlocutory appeal.

¶ 22 E. The Present Appeal

¶ 23 After Mong filed his notice of appeal challenging the November 30 orders, he submitted his docketing statement on December 26, 2017 identifying the following issues for appeal: “[f]ailure to meet the legal standard required under 65 ILCS 5/11-31/2.1(a); and further reversible error by admitting a policy incident report as evidence in support of motion seeking the grant of injunctive relief.” Mong also filed an emergency motion to stay the trial court proceedings which was denied by this court on January 25, 2018.

¶ 24 F. Further Proceedings

¶ 25 During the pendency of the present appeal, the circuit court proceedings continued. In addition to the motion to consolidate the Mong v. Selvey action, the court also ruled on motions regarding discovery, protective orders, and a request for a substitution of judge. The City withdrew its motion to expand the receivership. Most pertinent to this appeal, the court

reviewed Mong's emergency motion, filed on December 29, 2017, to vacate the modified orders entered on December 21. The newly filed motion challenged the court's order continuing the receivership and prohibiting Mong's presence from the property. A briefing schedule was set for the City to file a response and for Mong to submit any necessary reply by February 8, 2018.

¶ 26 On February 15, 2018, the court denied Mong's motion to vacate.⁴ The court found that orders prohibiting Mong's presence from the property had become moot after Selvey and Phillips moved out. The court stated that it remained concerned over whether the property would be properly managed without the receiver. Thus, the court ruled it would not discharge the receivership unless proof was presented that Mong or someone would be paying the utility bills and a further inspection of the property confirmed that heat and hot water were functioning. Mong did not file a second notice of appeal or amend his pending appeal after the court entered its orders continuing the receivership.

¶ 27 Although another court date was set for March 15, 2018, the record for appeal was prepared and submitted to this court on March 14, 2018. Thus, it is unclear from the record whether the receivership was again continued or whether Mong had presented sufficient evidence to discharge the receiver.

¶ 28 **II. ANALYSIS**

¶ 29 On appeal, Mong disputes the propriety of the circuit court proceedings and argues that he was not afforded due process nor given proper notice of the proceedings. Specifically, he argues that the City improperly gave notice where there was no pending complaint at the

⁴The second motion to vacate maintained that appointment of the receiver was "superfluous" where there was no real issue with the heat or gas, and that notice and service were improper. The motion further argued that the presence prohibition should be lifted to allow Mong to inspect the property to address the issues outlined in the complaint.

time of the alleged phone call on November 27, 2017. He further contends that the City's reliance on telephonic notification, a more lenient form of notice, rather than written notice violates due process. Lastly, he argues that the City violated his due process rights where the City did not show an immediate and irreparable harm that would result if a receiver was not appointed during the emergency hearing.

¶ 30 The City responds that this court lacks jurisdiction over Mong's claims because the notice of appeal was not timely filed. Further, the City challenges Mong's standing to challenge the receivership and argues that even if he had standing, he forfeited his arguments. Lastly, the City argues that Mong's due process and notice claims are without merit because notice was reasonably calculated to and did, in fact, give notice of the hearing at which the City presented specific facts showing the risk of immediate and irreparable injury, loss, or damage justifying the appointment of the receiver.

¶ 31 Before addressing the merits of this case, we must first determine whether this court has jurisdiction. Mong's notice of appeal challenges the circuit court's order appointing a receiver entered on November 30, 2017. An order appointing a receiver is appealable under Illinois Supreme Court Rule 307(a)(2) (eff. Nov. 1, 2017). However, if, as the case is here, the order was entered *ex parte*, Rule 307(b) provides that the party seeking to appeal the order "shall first present, on notice, a motion to the trial court to vacate the order." Ill. S. Ct. R. 307(b) (eff. Nov. 1, 2017). The City correctly cites *People ex rel Edgar v. Miller*, 110 Ill. App. 3d 264, 267 (1982), which states that "[t]he purpose of this rule is to preclude appeals where there has been only partial or one-sided consideration below." The court's understanding of Rule 307(b)'s purpose, in the context of a temporary restraining order, is

equally applicable to the appointment of a receiver as both are interlocutory orders that may be appealed as a matter of right under Rule 307. See Ill. S. Ct. R. 307 (eff. Nov. 1, 2017).

¶ 32 Rule 307(b) further states that an appeal may be taken in the 30 days after the motion to vacate is denied or “if the court does not act thereon within 7 days after its presentation.” Ill. S. Ct. R. 307(b). This latter portion allows for an interlocutory appeal, without waiting for a denial of the motion, if the circuit court takes longer than seven days to issue its ruling following the motion hearing. See, e.g., *Grossman v. Grossman*, 304 Ill. App. 507, 514 (1940) (applying former Rule 31 which Rule 307 replaced and finding that, “the defendant had a right to appeal when the court did not rule on his motion within seven days”).

¶ 33 Here, Mong’s notice of appeal was filed on December 20, 2017. Mong asked this court to review the November 30 orders entered by the circuit court, under Rule 307(a). Mong’s appeal ignores the fact that the November 30 orders were entered *ex parte* because neither he nor any representatives for the other defendants appeared at the emergency hearing. Thus, Rule 307(b), rather than Rule 307(a), governed the proper procedure to invoke his right to file an interlocutory appeal.

¶ 34 Mong appeared to attempt compliance with Rule 307(b) when he filed his *pro se* motion to vacate the November 30 orders. His notice of filing set a hearing date for December 14, 2017. A hearing transcript from this date is not in the record, however, we can determine that the motion was noticed but never presented to the court. In the court’s written order, leave was granted to amend the motion. The court also set a briefing schedule and postponed scheduling a hearing date. It can be inferred, even without the benefit of a report of proceedings, that the motion was not presented for the court’s consideration on December 14. Thus, the court did not deny the motion nor did the court delay in issuing a ruling. We find

that neither conditions of Rule 307(b) were satisfied at the time Mong's notice of appeal was filed, thus this court lacks jurisdiction to reach the November 30 orders which were prematurely appealed.⁵

¶ 35 However, our inquiry does not end there. To complicate matters, Mong never submitted an amended motion to vacate and actually withdrew his *pro se* motion the day after his notice of appeal was filed. After filing his notice of appeal, Mong's counsel discussed with the circuit court the effect of the appeal on the pending motion and initially concluded that the motion would be entered and continued pending the interlocutory appeal. The hearing proceeded to address other pending matters and the court entered a modified order regarding the receiver's appointment. Counsel then voluntarily withdrew the motion to vacate. Soon thereafter, Mong filed a second motion to vacate which was denied during the pendency of this appeal.

¶ 36 Mong's second motion to vacate challenged the orders entered on December 21. We acknowledge that Mong continued to contest the appointment of the receiver as he did in his initial *pro se* motion to vacate. The December 21 orders did not give the receiver any new powers and modified the November 30 order to remove the authorization to force the tenants, residents, or other occupants of the property to vacate the premises. The court continued the receiver's remaining powers based on its findings during the November 30 hearing and the lack of any newly introduced evidence to justify discharging the receiver. The court also

⁵We note that, even if we found that Mong had properly and timely appealed the November 30 orders, he failed to include a report of proceedings from that hearing date. One of Mong's arguments poses a due process claim because the City allegedly failed to show any immediate and irreparable harm would result if the receiver was not appointed on November 30. As there is no transcript to review, it is impossible to determine whether the City presented sufficient evidence to justify the appointment of a receiver. As the appellant, Mong has the burden of presenting a sufficient record to support his claims of error asserted. *Wackrow v. Niemi*, 231 Ill. 2d 418, 428 n.4 (2008). Without a sufficient record, we presume that the order entered by the circuit court was proper, had a sufficient factual basis, and was in conformity with the law. See *Id.*

entered a new order which prohibited Mong's presence from the property. A full hearing was held on the second motion to vacate. Thus, any appeal of the December 21 orders would not be precluded for the same reason that an appeal of the November 30 order was rejected. Namely, that the matter was decided on partial or one-sided consideration below. However, Mong never filed a notice of appeal regarding the denial of his second motion to vacate. Thus, we next consider whether the notice of appeal filed on December 20, 2017 also encompasses the circuit court's denial of the second and separate motion to vacate.

¶ 37 The City contends that Mong's premature appeal cannot be cured by the proceedings which took place after the notice was filed. The City relies on *Murges v. Bowman*, 254 Ill. App. 3d 1071 (1993), in which this court noted that our power of review under Illinois Supreme Court Rule 307 is limited and "does not open the door to a general review of all orders entered by the trial court up to the date of the order that is appealed." *Bowman*, 254 Ill. App. 3d at 1080 (quoting *Panduit Corp. v. All States Plastic Manufacturing*, 84 Ill. App. 3d 1144, 1151 (1980)). Mong did not file a reply brief and offers no argument in response to the City's assertion.

¶ 38 In *Bowman*, the court was confronted with the question of whether the scope of review on appeal of an interlocutory order also encompassed previously issued and unappealable orders. See *Bowman*, 254 Ill. App. 3d at 1081. Dissimilarly, in this instance, we are asked to determine the effect of an order issued after the notice of appeal was filed on this court's jurisdiction. We find no rule or caselaw which specifically addresses the effect of further proceedings after notice of an interlocutory appeal is filed. We briefly consider Illinois Supreme Court Rule 303, (eff. Nov. 1, 2017), which outlines the appropriate treatment of an appeal of a final judgment where further proceedings take place after the notice of appeal is

filed. Rule 303(a)(2) provides that a “premature” notice of appeal filed before a post-judgment motion is resolved will become “effective” when the order denying the post-judgment motion is entered. See Ill. S. Ct. R. 303(a)(2). The Committee Comments expound that there is no need to file a second notice of appeal if the order entered, after the appeal was noticed, simply denies the post-judgment motion. Ill. S. Ct. R. 303(a)(2), Committee Comments (adopted Mar. 16, 2007). However, if the order grants new or different relief, or resolves a separate claim, then a second or amended notice of appeal is necessary to preserve the appeal. *Id.*

¶ 39 Although this rule allows for the curing of a premature notice of appeal in relation to post-judgment motions, we cannot find that Mong’s premature notice of appeal became “effective” when the second motion to vacate was denied. Considering the nature of interlocutory appeals, we recognize that they are specifically enumerated exceptions to the general rule that only final judgments may be appealed. See *Rogers v. Tyson Foods, Inc.*, 385 Ill. App. 3d 287, 288 (2008) (“only final judgments or orders are appealable [as of right] unless the particular order falls within one of the *** specified exceptions enumerated by Illinois Supreme Court Rule 307”). Thus, without a specifically enumerated rule, we decline to extend the scope of review under interlocutory appeals to encompass orders issued after the notice of appeal was filed.

¶ 40 Mong’s notice of appeal was only valid for appealing the November 30 orders. However, he failed to comply with Rule 307(b) and his appeal was improperly noticed. Although further proceedings later addressed the deficiencies of his initial appeal, these proceedings concerned a modified order entered on December 21. Mong never amended his notice of

appeal in this court or filed a new notice to challenge the court's modified order. Thus, we find he failed to preserve the issue for appeal.

¶ 41 Having found that we are without jurisdiction because Mong did not comply with our Supreme Court Rules, we dismiss Mong's appeal and need not address the City's remaining arguments or the merits of Mong's claims.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we lack jurisdiction and appeal must be dismissed.

¶ 44 Appeal dismissed.