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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MICHELE A. CAMPIONE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 18 M1 702068
)	
JOSHUA MIRANDA,)	Honorable
)	John Fotopoulos and
Defendant-Appellant.)	James Ryan,
)	Judges, presiding.

JUSTICE COBBS delivered the judgment of the court.

Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in striking defendant's jury demand where defendant did not relinquish his right to trial by jury.

¶ 2 This appeal arises out of the trial court's order striking Defendant, Joshua Miranda's jury demand, and the subsequent actions that involved the trial court after it granted Miranda's substitution of judge motion. In his appeal, Miranda contends that: (1) the trial court had no authority to "waive" his jury demand; and (2) the trial court violated his due process rights

after it granted his substitution of judge motion. For the following reasons, we reverse and remand.

¶ 3

I. BACKGROUND

¶ 4

The limited record on appeal establishes the following facts. On February 2, 2018, Michela Campione filed a complaint for forcible entry and detainer against Joshua Miranda seeking immediate possession of a property located at 6102 W. 64th Street in Chicago, Illinois and outstanding rent in the amount of \$3,250.00.

¶ 5

Miranda timely filed his appearance along with a jury demand on May 23, 2018, and the case was transferred to a jury room and set for a case management conference. On May 29, 2018, during the case management conference the trial court set the matter for pre-trial conference on June 12, 2018 before Judge Jim Ryan, with a trial set for the next day. The court's case management order indicates that at the time of pre-trial, each party shall have ready copies of all jury instructions, witness list, and motions in limine.

¶ 6

On June 12, 2018, the date set for pre-trial, Miranda was not present in the courtroom at the time the case was called. The court then entered an order striking Miranda's jury demand and indicating that the June 13, 2018 trial date would stand. On that same date, Miranda filed two separate motions. The first was a motion to reinstate the jury demand; the second was a motion pursuant to 735 ILCS 5/2-1001(a)(2), for a substitution of judge as of right. On June 13, 2019, Judge Ryan granted Miranda's motion for substitution of judge.

¶ 7

On that same date, before Judge John Fotopolous, Miranda's motion to reinstate his jury demand was denied. The notes on the half sheet, included in Miranda's appellate brief, indicate that the defendant did "not have jury instructions and [was] not prepared. The case

proceeded to a bench trial and a judgment of eviction was entered against Miranda on June 13, 2018.

¶ 8 On July 13, 2018, Miranda filed a notice of appeal, and, subsequently, on July 20, 2018, Miranda filed a motion to stay pending the appeal. On August 2, 2018, Judge Ryan, for whom a substitution of judges had been previously granted, denied the motion to stay. On August 8, 2018, Miranda filed a motion to vacate Judge Ryan's August 2, 2018 order. Although no copy of the August 2, 2018 order appears in the brief, Miranda states that it was in fact vacated. However, on August 22, 2018, the motion to stay was again denied. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 At the outset, we note that Campione has not filed a response brief. Thus, our review is governed by *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976), wherein our supreme court "set forth three distinct, discretionary options a reviewing court may exercise in the absence of an appellee's brief: (1) it may serve as an advocate for the appellee and decide the case when the court determines justice so requires, (2) it may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of an appellee's brief, or (3) it may reverse the trial court when the appellant's brief demonstrates prima facie reversible error that is supported by the record." *Thomas v. Koe*, 395 Ill. App. 3d 570, 577 (2009) (citing *Talandis*, 63 Ill. 2d at 133). The issues presented are clear, and can be decided without the aid of the appellee's response brief. Accordingly, we proceed to the merits.

¶ 11 On appeal, Miranda argues that (1) that once the jury demand was properly made the trial court had no authority to "waive" that demand; and (2) the trial court's actions after the

motion to substitute judge was granted violated his due process rights. We begin our analysis with a focus on the trial court's decision to strike Miranda's jury demand.

¶ 12 We note initially that Miranda asks this court to analyze the claimed jury demand error as an issue of statutory construction, for which *de novo* review would apply. Miranda then cites us to section 9-108 of the Code of Civil Procedure (735 ILCS 5/9-108 (West 2016)). Section 9-108 states that "[i]n any case relating to premises used for residence purposes, either party may demand trial by jury, notwithstanding any waiver of jury trial contained in any lease or contract." *Id.* We perceive no need to construe this section of the statute. Its language is clear and unambiguous. Moreover, we recognize the right to a jury trial to flow from our constitution which provides that the right of trial by jury as heretofore enjoyed shall remain inviolate. Ill. Const. 1970, art I § 13. Thus, we also decline Miranda's entreaty for *de novo* review.

¶ 13 Based on our review of the record, Miranda's jury demand was timely and properly filed. There is no indication in the record that the court's decision to strike that demand was prompted by the plaintiff. Neither is there any basis upon which to conclude that Miranda somehow waived his demand or that he was defaulted for a failure to appear. Thus, we believe the issue in this case, as simply framed, is whether the trial court erred in striking Miranda's jury demand.

¶ 14 Our supreme court has consistently held that the statute regulating the right to a jury trial "should be liberally construed in favor of the right and the inclination of the court should be to protect and enforce the right. *Greene v. City of Chicago*, 73 Ill. 2d 100, 105 (1978). In *Schwartz v. Kominsk8i*, 25 Ill. App. 3d 789, 790 (1975), the court was asked to determine whether it is error for a trial judge to decide a civil suit without a jury after a defendant has

answered the complaint and filed a jury demand. The court answered the inquiry in the affirmative. *Id.* More recently, in *Pecoraro v. Kesner*, 217 Ill. App. 3d 1039, 1046 (1991), the court on appeal held that the trial court committed reversible error in striking a tenant's jury demand in a forcible entry and detainer action where striking the demand was not an exercise of discretion relating to allowance of a late filed jury demand but rather was a striking of a properly filed and time timely jury demand.

¶ 15 Here, Miranda was late to the pre-trial conference and the trial court *sua sponte* entered an order to strike the jury demand. The record demonstrates that prior to the pre trial conference, Miranda timely filed his appearance and jury demand on May 23, 2018. Miranda never attempted to withdraw his jury demand. In fact, there is no indication in the record that Miranda intentionally relinquished or abandoned his jury demand.

¶ 16 We are sensitive to the needs of the trial court to manage often severely swollen dockets. However, given the nature of the right to a jury trial, not even the court's right to manage its docket, without more, can suffice to uphold a court's decision to strike a party's properly filed demand. We believe that the courts' rulings in *Greene*, *Schwartz* and *Pecoraro*, inform the appropriate disposition here. Accordingly, we reverse the trial court's decision to strike Miranda's properly filed jury demand and remand the case for further proceedings.

¶ 17 As we find that the trial court erred in waiving the jury demand we need not address Miranda's remaining due process claim.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we reverse the circuit court of Cook County and remand for further proceedings.

¶ 20 Reversed and remanded.