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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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ZBIGNIEW BOGDANOWICZ and TOMASZ BOGDANOWICZ,	)	Appeal from the
	)	Circuit Court of
	)	Cook County
Plaintiffs-Appellees,	)	
	)	
v.	)	10 M1 109400
	)	
AA TRUCK & TRAILER SERVICE REPAIR and ANDREJ KUKUC,	)	Honorable
	)	James E. Synder,
	)	Judge Presiding.
Defendants-Appellants.	)	

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

**ORDER**

*Held:* Following a bench trial on Illinois Wage Payment and Collection Act claim, defendants failed to demonstrate from record on appeal that trial court’s findings were against the manifest weight of the evidence, specifically that the individual defendant was personally liable; that plaintiffs were entitled to attorney fees; that plaintiffs were defendants’ employees; that plaintiffs completed conditions precedent to payment; and that plaintiffs’ were entitled to \$4,111.80 in damages.

Defendants AA Truck & Trailer Service Repair and Andrej Kukuc appeal following a bench trial in which the trial court found them liable to plaintiffs Zbigniew and Tomasz Bogdanowicz for failure to pay wages due under the Illinois Wage Payment and Collection Act (820 ILCS 115/1 *et seq.* (West 2008)). We affirm.

#### BACKGROUND

Zbigniew, who had previously worked as a long-haul truck driver for many years, approached AA's manager Janusz Sobola about jobs for himself and his son Tomasz. Sobola agreed to hire them, but Sobola also informed plaintiffs that, pursuant to company policy, plaintiffs would have to form their own corporation in order to be paid. The exact purpose of this requirement is unclear in the record, but defendant Andrej Kukuc, AA's president, later testified that "he required drivers to maintain their own corporations for tax and liability reasons."

Sobola offered plaintiffs a flat fee of \$1300, plus reimbursement at 40 cents per mile and \$35 per stop, to drive a truck as a team from Chicago to locations on the West Coast. AA hires drivers on a per-trip basis, rather than under any type of ongoing arrangement. Plaintiffs made two trips on behalf of AA in June 2009, the first to Stockton, California, and the second to Vancouver, Washington.

Pursuant to state and federal regulations, commercial truck drivers are required to keep relatively detailed logs of their trips, particularly regarding fuel purchases. Following each of the two trips, plaintiffs submitted the required logs to AA, which were later admitted into evidence at trial. After completing the first trip, Tomasz noticed a discrepancy in a fuel receipt. Tomasz testified that the error occurred because AA had provided him with two separate checks for a single refueling stop and, during check out, the cashier had erroneously mislabeled a receipt as

“reefer” fuel, that is, fuel carried in a refrigerated trailer rather than used in fuel tanks. As Sobola later testified, this type of error is a problem because reefer fuel is not taxed in the same manner as fuel for use by trucks. This loophole is sometimes used by unscrupulous trucking companies to avoid paying fuel taxes, and regulators often look for irregularities like this during audits in order to uncover fraud.

When Tomasz turned in the logs for the first trip, Sobola accepted the paperwork but asked him to provide a written explanation of the receipt discrepancy for the file. When plaintiffs turned in their logs from the second trip, however, Sobola testified that he found that the separate logs kept by plaintiffs did not match up and were not signed. Sobola asked plaintiffs to reconcile the logs and submit the explanation for the fuel receipt.

Before plaintiffs did so, AA issued a check to plaintiffs as payment for the two trips. This was apparently done by an office manager without Sobola’s permission, and when Sobola learned that the check had been sent to plaintiffs he issued a stop payment notice on the check. Plaintiffs were apparently unaware of Sobola’s action, and when they attempted to deposit the check it bounced. Sobola testified that he asked plaintiffs several times to return to AA and reconcile their logs before they would be paid, but they did not do so. AA never paid plaintiffs for the two trips.

Plaintiffs filed a three-count complaint against defendants in March 2010, seeking payment for the two hauling trips to the West Coast. Counts I and II alleged causes of action for breach of contract and the dishonored check, and count III stated a claim under the Illinois Wage Payment and Collection Act (820 ILCS 115/1 *et seq.* (West 2008)). The case was heard at a bench trial on June 23, 2010, at which the trial court found in favor of defendants on counts I and II and in favor of plaintiffs in the amount of \$4,111.80 on count III. The trial court continued the

matter for a hearing on plaintiffs' petition for attorney fees, and on July 3, 2010, the trial court awarded plaintiffs a further \$2,115 in attorney fees. Defendants timely filed notice of appeal.

#### ANALYSIS

We initially note that plaintiffs have not filed a response to defendants' opening brief. However, we may reach the merits of an appeal even absent an appellee's brief "if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief." *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). The record on appeal in this case is limited. The record consists of (1) the common-law record, which contains court orders and the complaint; (2) a very limited bystander's report certified by the trial court under Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005); and (3) several trial exhibits. As the appellants, it is defendants' burden to provide an adequate record of the proceedings in order for us to fully review their claims on appeal (*Altaf v. Hanover Square Condominium Association No. 1*, 188 Ill. App. 3d 533, 539 (1989)), and "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant[s]" (*Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)). Moreover, the issues that defendants' raise are relatively straightforward, and we are able to resolve this case without the benefit of a brief from plaintiffs.

Defendants first argue that the trial court erred by holding defendant Andrej Kukuc, AA's president, personally liable for the judgment under the Illinois Wage Payment and Collection Act because he is only an officer of AA, not an "employer". The Act is designed "to assist employees in seeking redress for an employer's wrongful withholding of employee benefits." *Miller v. J.M. Jones Co.*, 198 Ill. App. 3d 151, 152 (1990). Section 13 of the Act deals with liability of corporate officers, stating that "any officers of a corporation or agents of an employer

who knowingly permit such employer to violate the provisions of this Act shall be deemed to be the employers of the employees of the corporation.” 820 ILCS 115/13 (West 2008).<sup>1</sup> That is, in order to be personally liable under the Act, there must be evidence that the officer or agent “knowingly or wilfully aided or allowed” the employer to violate the Act. *Andrews v. Kowa Printing Corp.*, 351 Ill. App. 3d 668, 680 (2004), *affirmed*, 217 Ill. 2d 101 (2005).

Plaintiffs testified that they never interacted with or met Kukuc, and Kukuc testified that he was unaware that plaintiffs had not been paid until they filed the complaint in the circuit court. But Kukuc also testified that “he required drivers to maintain their own corporations for tax and liability reasons.” The record of Kukuc’s testimony consists of five sentences in the bystander’s report, and there is no further explanation of the meaning of this statement in the record. The trial court apparently used this testimony as the basis for imposing personal liability on Kukuc. The trial court’s finding on this point is recounted in the bystander’s report as follows:

“The Court held that Andrej Kukoc [*sic*] is personally liable for refusing payment to the Plaintiffs based on Defendant Kukuc’s testimony that it was AA Truck’s policy at Kukoc’s [*sic*] direction to require truckers to form corporations for the purpose of avoiding taxes and other legal liabilities. The Court finds that this constitutes a willful act to avoid the Wage Payment and Collection Act sufficient to impose personal liability under the Act.”

This case was resolved at a bench trial, and on issues of fact we “defer to the findings of the trial court unless they are against the manifest weight of the evidence.” *Eychaner v. Gross*,

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<sup>1</sup> After plaintiffs filed their complaint, section 13 was amended in order to clarify the extent of individual liability (see Pub. Act 96-1407 (eff. Jan. 1, 2011)), but this amendment is not at issue in this case.

202 Ill. 2d 228, 251 (2002). “A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence,” and “[t]he court on review must not substitute its judgment for that of the trier of fact.” *Id.*

In this instance, the trial court’s determination that Kukuc knowingly assisted AA in violating the Act was based on the trial court’s evaluation of the testimony of the witnesses, which is a factual determination. It is unclear from the bystander’s report precisely what Kukuc meant by his testimony, but the trial court had the opportunity to view Kukuc’s demeanor while he testified and it had the benefit of hearing verbatim all of the testimony during the trial. Defendants argue that the evidence demonstrates that Kukuc never had any contact with plaintiffs and the trial court effectively imposed “strict liability” on him for AA’s failure to pay plaintiffs their wages. However, the trial court explicitly based its ruling on Kukuc’s policy of requiring drivers to incorporate, which he explained was to limit liability. Defendants argued at trial and now on appeal that plaintiffs were not “employees” under the Act. This argument is largely dependent on the fact that plaintiffs worked on a per-job basis and drove the trucks independently, at least from defendants’ point of view. It seems that the trial court viewed Kukuc’s policy as an attempt to legally categorize plaintiffs as independent contractors by virtue of their “corporate” status, which would exempt them from the Act’s protections. See 820 ILCS 115/2 (West 2008).

Whether this was in fact the trial court’s reasoning on this issue is impossible to tell. The overriding point is that we do not know why the trial court ruled as it did because we lack a sufficiently detailed record. Although we have been provided with a report of proceedings, it is minimal and sheds very little light on Kukuc’s testimony and the trial court’s rulings. It is well

settled that “to support a claim of error, the appellant has the burden to present a sufficiently complete record. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422 (2009). In the absence of a sufficient record, we must presume that the trial court’s finding that Kukuc’s policy was a knowing attempt to circumvent the Act “had a sufficient factual basis and \*\*\* conforms with the law.” *Id.* At the very least, the trial court found that Kukuc’s policy was intended to avoid legal liability, which the trial court took to mean liability under the Act. There does not appear to be any evidence in the record that further explains Kukuc’s testimony on this point or contradicts the trial court’s interpretation of its meaning. The trial court’s decision to find Kukuc personally liable based on this testimony is accordingly not against the manifest weight of the evidence.

Defendants next argue that the trial court erroneously awarded attorney fees to plaintiffs. Defendant argues that plaintiffs sought attorney fees under section 1 of the Illinois Attorneys Fees in Wage Actions Act (705 ILCS 225/1 (West 2008)), and that they are not entitled to attorney fees under this section because they failed to make a demand on defendants in writing for the amount that plaintiffs sought to be recovered as required by the statute. As with the first issue, however, defendants have failed to preserve an adequate record for review of this issue. As relevant to the fee issue, the record contains only the affidavit of plaintiffs’ attorney and the trial court’s order granting attorney fees to plaintiff. Conspicuously absent from the record is any report of proceedings or evidence from the July 3, 2010 hearing that the trial court held on the fee petition. Even assuming that plaintiffs were required to demonstrate that they made a demand pursuant to section 1, we are unable to determine whether evidence on this point was heard by the trial court at the July 3 hearing. Again, in the absence of a sufficient record, we presume the trial court had an adequate factual and legal basis for granting plaintiffs’ attorney fee petition. See *Gulla*, 234 Ill.2d at 422.

Defendants next argue that the trial court erroneously found that plaintiffs were employees and thus covered by the Wage Payment and Collection Act. Section 2 of the Act states that

“the term ‘employee’ shall include any individual permitted to work by an employer in an occupation, but shall not include any individual:

(1) who has been and will continue to be free from control and direction over the performance of his work, both under his contract of service with his employer and in fact; and

(2) who performs work which is either outside the usual course of business or is performed outside all of the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and

(3) who is in an independently established trade, occupation, profession or business.” 820 ILCS 115/2 (West 2008).

The trial court found that plaintiffs did not meet the first of these three requirements because a number of documents that were admitted into evidence demonstrated that defendants “controlled the manner of work that was performed consist with employer employee relationships,” as well as “controlled the terms, conditions and manner in which work was to be performed.” The court also found that it “was undisputed that AA Truck owned the tools and equipment” that plaintiffs used.

The trial court’s findings on this point are not against the manifest weight of the evidence. Defendants required plaintiffs to adhere to a number of rules and regulations while working as drivers for defendants. Among these requirements were detailed rules about the

length of time plaintiffs could drive without a break and the length of breaks and rest stops. Additionally, plaintiffs were required to keep detailed logbooks of their trips, which included mileage, hours of service, and equipment inspections. Finally, as the trial court noted, it was undisputed that defendants owned the trucks that plaintiffs operated. Based on the evidence in the record, we cannot say that the trial court's finding that plaintiffs were subject to the direction and control of defendants was not supported by the evidence. Because individuals are employees under section 2 of the Act if they are subject to an employer's direction and control, the trial court did not err by finding that plaintiffs were employees of defendants.

Defendants next argue that plaintiffs were not entitled to judgment under the Act because they did not perform all of their contractual responsibilities. Specifically, defendants argue that plaintiffs were not entitled to their wages because they failed to complete the fuel receipt discrepancy report and reconcile their trip logs. The trial court found that this was not a defense under the Act for defendants' failure to pay plaintiffs' wages.

Section 3 of the Act mandates that "[e]very employer shall be required, at least semi-monthly, to pay every employee all wages earned during the semi-monthly pay period." 820 ILCS 115/3 (West 2008). Section 3 allows executive, administrative, and professional employees to be paid monthly, as well as commissions due to any employee. 820 ILCS 115/3 (West 2008). The Act does not contain any other exceptions to its mandate that employers pay wages to their employees.<sup>2</sup> Section 2 of the Act defines "wages" broadly as "any compensation owed an employee by an employer pursuant to an employment contract or agreement between the 2 parties, whether the amount is determined on a time, task, piece, or any other basis of

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<sup>2</sup> In fact, section 9 of the Act explicitly prohibits employers from taking deductions of any kind from employee wages except in specific enumerated circumstances. See 820 ILCS 115/9 (West 2010).

calculation.” 820 ILCS 115/3 (West 2008). Although defendants argue that the parties agreed that plaintiffs would be paid “when the job is done,” it appears that the trial court did not find that “the job” included reconciling the logbooks and filing fuel receipt explanations. The testimony of all the parties made clear that plaintiffs would be paid by defendants on a “per trip basis,” and it implicitly appears from the record that the trial court found as a matter of fact that the trip was concluded when plaintiffs submitted their paperwork to defendants, not when the paperwork was completed to defendants’ satisfaction.

Moreover, section 10 of the Act requires employers to “notify employees, at the time of hiring, of the rate of pay and of the time and place of payment.” 820 ILCS 115/10. The only evidence in the record regarding when plaintiffs’ would be paid is Sobola’s testimony that plaintiffs “were told that payment would be issued after review of all logs and customer receipt of the merchandise.” There was no testimony that plaintiffs were informed that payment was condition on completion of the logs to defendants’ satisfaction. It is therefore unsurprising that the trial court rejected defendants’ position that plaintiffs were not entitled to be paid because of plaintiffs’ failure to revise the logbooks and file the receipt explanation.

Although defendants argue that it would be “inequitable” to allow truckers to recover pay prior to properly filing paperwork that is required by federal regulations, this is not relevant to this appeal. The only question on review is whether the trial court’s finding that defendants owed plaintiffs wages was “unreasonable, arbitrary, or not based on the evidence.” *Eychane*, 202 Ill. 2d at 251. It was not, and the trial court’s finding that plaintiffs had completed the agreed task and were entitled to their wages is consequently not against the manifest weight of the evidence.

Finally, defendants argue that the amount of damages that the trial court awarded to plaintiffs was not based on the evidence. Defendants do not elaborate on their argument, other than to assert without citation to the record<sup>3</sup> that plaintiffs claimed damages of \$4,609, whereas defendants contended that plaintiffs should only be paid \$3,174.69, and to claim that the trial court “arbitrarily picked” damages of \$4,111.80.

According to defendants, there was a dispute over whether plaintiffs were to be paid per mile or per trip, yet the record does not clearly support defendants’ assertion on this issue and there is no clear statement in the record of the reasons that the trial court chose this number. The only statement that might explain the trial court’s reasoning on damages is a finding that “offsets, damages and dissatisfaction for failing to complete the reports \*\*\* was insufficient to withhold payment to the Plaintiffs under the Act.” This finding, however, relates to a defense to liability, not damages, and it is therefore unclear from the limited report of proceedings what facts the trial court considered in computing damages. As we have noted repeatedly above, it was defendants’ burden to make an adequate record for us to review, and in the absence of one we presume that the trial court had a sufficient factual basis on which to base the damages award. See *Gulla*, 234 Ill.2d at 422.

#### CONCLUSION

Defendants have not demonstrated that the trial court’s factual findings at trial were against the manifest weight of the evidence. The judgment is affirmed.

Affirmed.

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<sup>3</sup> See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (mandating that argument “shall contain the contentions of the appellant \*\*\* with citation of the authorities and the pages of the record relied on”).