

No. 1-09-2755

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).

FIFTH DIVISION
January 7, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMES C. TEN BROECK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 MI 163287
)	
MOSHOOD FAYEMIWO,)	Honorable
)	Sheryl A. Pethers,
Defendant-Appellant.)	Judge Presiding.

JUDGE EPSTEIN delivered the judgment of the court.
Justices Joseph Gordon and Howse concurred in the judgment.

O R D E R

HELD: When an appellant fails to include a trial transcript or report of the proceedings in the record on appeal, this court must presume, pursuant to *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984), that the trial court's ruling after a bench trial was in conformity with the law and had a sufficient factual basis.

In 2008, *pro se* defendant Moshood Fayemiwo retained plaintiff James Ten Broeck, an attorney, to represent him in an immigration matter. In 2009, Ten Broeck filed a complaint

seeking unpaid fees and costs in excess of \$6,000. After a bench trial, the court entered judgment in favor of Ten Broeck, and awarded him damages in the amount of \$2,897.68, plus costs. Fayemiwo now appeals *pro se* contending that had the trial court read the parties' retainer agreement carefully, the court would have concluded that he owes Ten Broeck only \$500. We affirm.

Although the record on appeal does not include a report of proceedings, the following facts can be gleaned from the common law record.

Fayemiwo retained Ten Broeck to represent him in a removal proceeding. The record indicates that Fayemiwo and Ten Broeck attended a hearing in New York and that the case was ultimately terminated in Fayemiwo's favor.

Subsequently, Ten Broeck filed a complaint contending that, pursuant to the parties' retainer agreement, Fayemiwo owed him \$6,497.68, consisting of \$5,700 in fees and \$797.68 in costs. The complaint also contained, in the alternative, a *quantum merit* claim seeking \$6,362.18. The retainer agreement was not attached to the complaint.

Fayemiwo appeared *pro se*. After a bench trial on September 16, 2009, the trial court entered judgment in favor of Ten Broeck, and awarded him \$2,897.68, plus costs.

On appeal, Fayemiwo contends that the trial court erred when it determined that he owed Ten Broeck \$2,897.68, as pursuant to the parties' retainer agreement, he only owes Ten Broeck \$500.

Before turning to the merits of this appeal, we note that Ten Broeck has not filed an appellee's brief. However, the record is short and we may decide the merits of this appeal under the standards set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

In support of his appeal, Fayemiwo attached a copy of the parties' alleged retainer agreement to his brief. However, as the retainer agreement is not included in the record on appeal, it is not properly before this court and cannot be considered. *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 352 Ill. App. 3d 630, 639 (2004).

The record on appeal does not include a transcript of the September 16, 2009, trial, or other appropriate substitute (see Supreme Court Rule 323 (eff. Dec. 13, 2005)). Any doubts raised by the insufficiency of the record must be resolved against Fayemiwo, who, as the appellant, has the burden to present this court with a sufficiently complete record of the trial court proceedings to support his claims of error. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003), citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Accordingly, when the issue on appeal relates to the conduct of a hearing or

proceeding, the absence of a transcript or other record of that proceeding means that this court must presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Midstate Siding & Window Co.*, 204 Ill. 2d at 319.

Here, Fayemiwo contends that the trial court erred when it failed to carefully read the parties' contract, *i.e.*, the retainer agreement. However, the absence of a record of the proceedings at trial is fatal to his case since this court cannot discern from the record what evidence and testimony was presented at trial regarding the retainer agreement, why the court ruled as it did, or how the court calculated the amount that Ten Broeck was owed. In such circumstances, this court must presume that the trial court's entry of judgment in favor of Ten Broeck after a bench trial and its determination that he was owed \$2,897.68 were both legally and factually correct. *Midstate Siding & Window Co.*, 204 Ill. 2d at 319.

For the reasons stated above, the judgment of the trial court is affirmed.

Affirmed.