

2011 IL App (1st) 102895-U  
No. 1-10-2895

**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).

SECOND DIVISION  
June 30, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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MARK FENCKE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 M1 159318
	)	
NIPESH PATEL,	)	Honorable
	)	Dennis M. McGuire,
Defendant-Appellee.	)	Judge Presiding.

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

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**O R D E R**

*HELD:* The record on appeal was insufficient for review.  
This court affirmed the decision of the trial court.

¶ 1 Plaintiff Mark Fencke appeals *pro se* from the circuit court judgment in favor of defendant Nipesh Patel following a real estate sales dispute. Plaintiff contends defendant failed to pay

the agreed \$2,500 earnest money deposit and the lower court failed to consider relevant evidence at trial.

¶ 2 The limited common law record contains plaintiff's *pro se* complaint, wherein he alleged that defendant failed to pay the agreed \$2,500 earnest money deposit at closing following the short sale of plaintiff's townhouse.

¶ 3 The record also contains a trial call order showing that trial was held September 22, 2010, with both parties present. The court entered judgment in favor of defendant. The docket sheet shows that there were no witnesses presented, nor evidence submitted. Plaintiff timely appealed.

¶ 4 This court allowed plaintiff's motion to supplement the record on appeal, provided the "documents were considered as evidence before [the] trial court." The supplemental record contains a number of documents, including the purported real estate purchase and sales contract, an apparent title insurance document, and a document styled "earnest money log form," which plaintiff alleges establish that the buyer of the property owed him \$2,500 for the sale of certain personal property transferred with the townhouse. Plaintiff also submitted a purported "Transcript from the Circuit Court trial 9/22/10." This one-page document has no official signature or seal, but bears plaintiff's typewritten signature at the bottom, and appears to be plaintiff's recollections of what occurred at trial. In the

transcript plaintiff claims he attempted to present the documents to the judge, but the judge refused them.

¶ 5 Defendant filed a *pro se* response to plaintiff's motion to supplement the record, which this court has "taken with the case." In the motion, defendant claims the supplemental record should be stricken because the documents therein "were not considered as evidence before the trial court" and plaintiff did not prepare a "report or record of the trial." Defendant asserts that plaintiff's summary of the trial was "not a proper transcript of the trial court proceedings."

¶ 6 Defendant now persists in these claims. However, we first address defendant's motion to strike plaintiff's brief and dismiss this appeal for failure to comply with Supreme Court Rule 341(h) (eff. July 1, 2008). In support of his motion to strike defendant notes, *inter alia*, that plaintiff's fact section fails to reference the record and his argument section fails to cite any legal authority. See Ill. S. Ct. R. 341(h)(6), (7) (eff. July 1, 2008).

¶ 7 While true, none of these violations hampers our review because the record is short, and we have the benefit of a cogent appellee's brief. See *People v. Johnson*, 192 Ill. 2d 202, 206 (2000); *Barrett v. Fonorow*, 343 Ill. App. 3d 1184, 1188 (2003). Here, plaintiff has stated the issue at hand, that he was unfairly denied the opportunity to provide evidence on his

contract claim against defendant, and the relief requested of \$2,500. We therefore deny defendant's motion to strike plaintiff's brief and proceed in our review.

¶ 8 This court is limited to reviewing the evidence before the trial court to determine whether it supports the judgment. *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 278 (2006). Although plaintiff has submitted a purported transcript of the trial as the report of proceedings, there is no indication that a court reporter either prepared or certified that record, as required by Supreme Court Rule 323(b) (eff. Dec. 13, 2005), or that it constitutes a bystander's report, certified by the trial court under Rule 323(c). In addition, on its face, the transcript does not constitute an agreed statement of facts under Rule 323(d). Because the transcript does not comply with the certification requirements set forth in Rule 323, and has not been stipulated to, it is nothing more than a self-serving report by plaintiff. It cannot be considered trustworthy or reliable, due to plaintiff's stake in the outcome of the case. See *Midwest Builder Distributing, Inc. v. Lord and Essex, Inc.*, 383 Ill. App. 3d 645, 657 (2007). We therefore decline to consider the purported transcript in our disposition.

¶ 9 We also decline to consider plaintiff's documents submitted as part of the supplemental record. There is no indication that plaintiff presented these documents to the trial court. In fact,

the common law record suggests, to the contrary, that no evidence was presented at all. For the foregoing reasons, we grant defendant's motion to strike plaintiff's supplemental record.

¶ 10 We further conclude that absent a transcript, bystander's report, or agreed statement of facts, reflecting what occurred at the September 22 trial, the record in this case is simply insufficient for our review. An appellant bears the burden of providing a reviewing court with a complete record which fairly and fully presents all matters necessary and material for a decision of the question raised, and in the absence of such a record, we will not speculate as to what errors may have occurred below. *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757 (2006); see also *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). When the record on appeal is incomplete, a reviewing court should actually indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted correctly. *Smolinski*, 363 Ill. App. 3d at 757-58.

¶ 11 Plaintiff claims that the court unfairly refused to consider certain documents that would have supported his real estate contract claim. Plaintiff's claim fails for two reasons. First, it is rebutted by the common law record, which shows that no evidence was presented at trial. Second, even assuming plaintiff did attempt to present the documents, there is no record as to why the court refused them as evidence. The admission of

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evidence is within the sound discretion of the trial court, and a reviewing court will not reverse the trial court unless that discretion was clearly abused. *Snelson v. Kamm*, 204 Ill. 2d 1, 33 (2003). Absent a record disclosing the court's ruling and reasoning, we cannot say the court abused its discretion. Under these circumstances, we presume the trial court of Cook County acted correctly.

¶ 12 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 13 Affirmed; motion to strike brief, denied; motion to strike supplemental record, granted.