NOTICE
Decision filed 09/13/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 IL App (5th) 100473-U

NO. 5-10-0473

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

CHUCK'S RENTALS, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jackson County.
	)	
v.	)	No. 10-LM-349
	)	
JO ANN LEDBETTER,	)	Honorable
	)	W. Charles Grace,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Spomer and Stewart concurred in the judgment.

O R D E R

¶ 1 *Held*: Where defendant failed to present a report of the proceedings supporting her contentions of error, this court must presume that the circuit court's judgment comported with the law and had a sufficient factual basis, and the court's judgment in favor of plaintiff is affirmed.

¶ 2 Defendant, Jo Ann Ledbetter, appeals from the circuit court's denial of her posttrial motion to vacate the judgment entered in favor of the plaintiff, Chuck's Rentals, Inc., which awarded damages, attorney fees, and possession of the premises at issue to plaintiff. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On November 1, 2009, the parties entered into an agreement pursuant to which defendant would lease from plaintiff a house on College Street in Carbondale for a one-year term. The lease provided that defendant would be responsible for paying rent in the amount of $350 per month and that any rent payment more than five days late would result in a

penalty of $25 plus $5 for each day the rent was late. The lease further provided that plaintiff may terminate the lease and take possession of the property if the rent was more than five days late and that if it became necessary for plaintiff to pursue litigation defendant would be responsible for "all lawyer's fees and/or court costs."

¶ 5 On July 30, 2010, plaintiff brought an action pursuant to the Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-101 *et seq.* (West 2008)), in the circuit court of Jackson County, alleging that defendant had breached the lease by failing to timely pay rent as agreed, that defendant had been served with a five-day notice to pay past-due rent or vacate the premises, and that after five days defendant had failed to pay the past-due rent.

¶ 6 The court entered a judgment in plaintiff's favor following an August 25 bench trial, at which plaintiff introduced into evidence the lease, the five-day notice to pay rent or quit, an itemized list of past-due rent and late charges allegedly owed by defendant, and an affidavit of attorney hours. The court found that plaintiff had served defendant with a five-day notice to pay rent or quit, more than five days had elapsed, and defendant had failed to pay the amount due. The court, in a written judgment, ordered defendant to pay plaintiff $978.92 in past-due rent and late fees and $560 in attorney fees, and it awarded the immediate possession of the premises to plaintiff. No court reporter was present at the trial and no transcript or report of the proceedings is contained in the record on appeal.

¶ 7 Defendant filed a posttrial motion on August 30, seeking to have the court's August 25 judgment vacated. Defendant alleged that the judgment was in error because plaintiff did not properly serve defendant with a five-day notice to pay or quit as required by section 9-211 of the Act (735 ILCS 5/9-211(West 2008)). According to defendant, plaintiff's witness had testified at the trial that she posted the notice on the back door of the College Street house. Defendant also claimed that the court's calculation of damages was incorrect due to the double-charging of late fees for several days, resulting in an extra $220 being awarded

to plaintiff. Defendant requested an emergency stay of the forcible entry and detainer order.

¶ 8 Attached to defendant's motion was an affadavit from her brother, Linzie J. Ledbetter, in which he averred that he had calculated the late fees for which defendant was responsible and found that the court's award was $220 in excess of the correct amount. He also claimed that he was present at the trial and that he had heard plaintiff's representative testify that she did not personally give the five-day notice to defendant but rather posted it on the back door of the College Street house.

¶ 9 On September 29, the court, in a written order which noted that the court was "fully advised in the premises," denied defendant's motion. Defendant filed a notice of appeal on September 30.

¶ 10 On October 30, defendant filed bystander's reports prepared by her and her brother pursuant to Supreme Court Rule 323(c) (eff. Dec. 13, 2005). The bystander's reports quote a brief discussion among the court, defendant, and defendant's brother at the conclusion of the September 29 hearing on defendant's posttrial motion. According to the bystander's reports, the court announced that it was denying defendant's motions and that it would not afford defendant more time to vacate the house but that she could ask plaintiff for additional time. The bystander's reports do not purport to quote any testimony from the trial, nor do they refer to any evidence related to the service of the five-day notice, the calculation of the amount due to plaintiff, or the determination of attorney fees. Over plaintiff's objection, the circuit court granted defendant's motion to certify the bystander's reports, and they are a part of the record on appeal.

¶ 11 DISCUSSION

¶ 12 In determining whether the trial court erred when it entered the judgment in favor of plaintiff and awarded possession of the premises to plaintiff, the standard of review is whether the finding was against the manifest weight of the evidence. *S&D Service, Inc. v.*

915-925 W. Schubert Condominium Ass'n, 132 Ill. App. 3d 1019, 1021, 478 N.E.2d 478, 481-82 (1985). For a finding to be contrary to the manifest weight of the evidence, it must appear from the record that the " 'opposite conclusion is clearly evident' " or the findings of the trier of fact are " 'unreasonable, arbitrary, and not based upon any of the evidence.' " *Maple v. Gustafson*, 151 Ill. 2d 445, 454, 603 N.E.2d 508, 512-13 (1992) (quoting *Villa v. Crown Cork & Seal Co.*, 202 Ill. App. 3d 1082, 1089, 560 N.E.2d 969, 973 (1990)).

¶ 13 The role of a reviewing court is not to reinterpret the evidence or to engage in speculation, but only to determine if evidence in the record supports the lower court's judgment. *American Management Consultant, LLC v. Carter*, 392 Ill. App. 3d 39, 55, 915 N.E.2d 411, 426 (2009). The party seeking appellate review has the duty to prepare a complete record on appeal so that the court of review has before it sufficient facts upon which to base its resolution of the issues. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319, 789 N.E.2d 1248, 1251 (2003). The incompleteness of a record is a circumstance chargeable to appellant, and any doubt arising from the incompleteness of the record is properly resolved against her. *People v. Stewart*, 179 Ill. 2d 556, 565, 689 N.E.2d 1129, 1133 (1997). Unless there is a contrary indication in the record, it is presumed that the court heard adequate evidence to support its decision, particularly where the court states that it is fully advised in the premises and has considered the evidence and the arguments of the parties. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 394, 459 N.E.2d 958, 960 (1984).

¶ 14 Supreme Court Rule 323(a) (eff. Dec. 13, 2005) provides that "all the evidence pertinent to the issues on appeal" must be included in the report of proceedings. If no verbatim transcript of the proceedings is available, an appellant may prepare a bystander's report pursuant to Supreme Court Rule 323(c) (eff. eff. Dec. 13, 2005), which, if certified by the circuit court, then becomes part of the record on appeal.

¶ 15 Where an issue on appeal relates to the conduct of a proceeding, the issue is not

subject to review absent a report of the proceeding. *Webster v. Hartman*, 195 Ill. 2d 426, 432, 749 N.E.2d 958, 962 (2001). Absent a complete record, it will be presumed by a court of review that an order was " 'in conformity with the law and had a sufficient factual basis.' " *Webster*, 195 Ill. 2d at 432, 749 N.E.2d at 962 (2001) (quoting *Foutch*, 99 Ill. 2d at 392, 459 N.E.2d at 959).

¶ 16 With that backdrop, we turn now to defendant's contentions of error. Defendant first argues that the court erred by exercising jurisdiction over the cause despite testimony by plaintiff's witness that she posted the five-day notice on defendant's door and did not otherwise effect service on defendant.

¶ 17 Pursuant to section 9-211 of the Act, service of five-day notice to pay or quit may be made "by delivering a *** copy thereof to the tenant, or by leaving the same with some person of the age of 13 years or upwards, residing on or in possession of the premises; or by sending a copy of the notice to the tenant by certified or registered mail, with a returned receipt from the addressee; and in case no one is in the actual possession of the premises, then by posting the same on the premises." 735 ILCS 5/9-211 (West 2008). It is true, as defendant contends, that strict compliance with section 9-211 is required and that courts have held that posting a notice on the tenant's door, with nothing more, is insufficient to satisfy the due process rights of the tenant. See *Figueroa v. Deacon*, 404 Ill. App. 3d 48, 935 N.E.2d 1080 (2010).

¶ 18 Here, defendant maintains that plaintiff's witness testified at the trial that she posted a copy of the five-day notice on defendant's back door and did not otherwise serve the notice upon defendant. If that were in fact what occurred, then the circuit court would have lacked jurisdiction over the matter. The record before us, though, does not establish that this is the case. In entering its judgment, the court noted that it was fully advised in the premises, and it expressly found that defendant was properly served with five-day notice to pay rent or

vacate the premises. Nothing contained in defendant's bystander's reports supports her claim that plaintiff's witness testified that she did not properly serve defendant with as provided by section 9-211 of the Act. Absent a transcript, a stipulated statement of facts, or a bystander's report establishing what the witness's testimony consisted of, we have no way of confirming what actually transpired during the trial. We therefore must presume that the court's determination that proper service was effected on defendant was in conformity with the law and had a sufficient factual basis.

¶ 19 Defendant next contends that even assuming that the circuit court did not err in entering a judgment in favor of plaintiff, its calculation of past-due rent and late fees owed to plaintiff was in error. Defendant acknowledges in her posttrial motion and brief that the court spent a significant amount of time determining the correct amount due to plaintiff, in the process examining plaintiff's itemized account ledger and asking plaintiff's representative to explain how the amount due was calculated. Only after this did the court find that defendant owed $978.92 in past-due rent and late fees.

¶ 20 The circuit court was in a much better position than this court to judge the credibility of the evidence and the witnesses, and absent an affirmative showing in the record that the judgment was an abuse of its discretion, we will not disturb its ruling. Because we do not have a transcript or a report of the proceedings of the trial and the bystander's report is silent on this point, we again must presume that the court's order was in compliance with the law and had a sufficient factual basis, and we decline to disturb its judgment.

¶ 21 Defendant next argues that the court's award of $560 in attorney fees to plaintiff was in error. As a general rule, each party is responsible for its own attorney fees. An exception to this rule exists, though, where the parties have entered into a contractual agreement to the contrary. *Abdul-Karim v. First Federal Savings & Loan Ass'n of Champaign*, 101 Ill. 2d 400, 411-12, 462 N.E.2d 488, 493 (1984). In cases where a contract provides for the award of

attorney fees, it is within the circuit court's discretion to determine what is a reasonable award, and we will not disturb its judgment absent an abuse of that discretion. *Id.*

¶ 22 Here, the lease provided that if plaintiff was required to pursue litigation in order to recover possession of the premises, defendant would be responsible for all attorney fees. Plaintiff submitted to the court an itemized affidavit of attorney hours, which the court had before it when it determined that a reasonable award was $560. In the absence of a transcript or a report of the proceedings affirmatively establishing an abuse of the court's discretion, we will presume that the court's award of $560 in attorney fees was not an abuse of its discretion, and we will not disturb its judgment on this issue.

¶ 23 Finally, defendant argues that her due process rights were violated when the circuit court failed to conduct a pretrial conference and failed to ask defendant if she was prepared for trial. Where an issue on appeal relates to the conduct of a hearing or proceeding, the issue is not subject to review absent a report or record of the proceeding. *Keefe v. O'Neil*, 174 Ill. App. 3d 1068, 1071, 529 N.E.2d 628, 630 (1988). The decision to proceed with a trial or to grant a continuance is within the sound discretion of the court, and we will not overturn that decision unless there is evidence in the record that the circuit court abused its discretion. *Pinelli v. Alpine Development Corp.*, 70 Ill. App. 3d 980, 1008, 388 N.E.2d 943, 962 (1979).

¶ 24 There is nothing within the record on appeal establishing the basis of the court's decision to proceed to the trial without conducting a pretrial conference, and we will therefore presume that its decision conformed with the law and had a sufficient legal basis. Furthermore, where a defendant in a forcible entry and detainer action is afforded a trial on the merits, it cannot be said that the lack of a pretrial conference was violative of fundamental fairness or her due process rights. *Housing Authority of the County of Franklin v. Moore*, 5 Ill. App. 3d 883, 886-88, 284 N.E.2d 456, 458 (1972).

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, we resolve all doubts arising from the incompleteness of the record against defendant, and we affirm the circuit court's judgment in favor of plaintiff.

¶ 27 Affirmed.