

No. 1-11-2147

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).

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ERNEST PADEN and BETTY BURNS PADEN,)	Appeal from the Circuit Court
)	of Cook County
Plaintiffs-Appellants,)	
)	
v.)	
)	10 M2 1828
THOMAS MOLITOR,)	
)	
Defendant-Appellee.)	Honorable
)	William Jackson,
)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices J. Gordon and Howse concurred in the judgment.

ORDER

¶ 1 HELD: Where plaintiffs failed to present a complete and sufficient record on appeal, the trial court is presumed to have acted in conformity with the law.

¶ 2 Plaintiffs Ernest Paden and Betty Burns Paden appeal the trial court's decision awarding them \$400 and costs against defendant Thomas Molitor. On appeal, plaintiffs argue that the trial court abused its discretion in failing to award the full amount requested in plaintiffs' complaint, \$1,000, plus interest, attorney fees, costs and sanctions.

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¶ 3 In October 2010, plaintiffs filed a complaint, alleging that defendant owed plaintiffs \$1,000, plus interest, attorney fees, costs, and sanctions. According to the complaint, Betty asked defendant to represent Ernest Paden as the executor of an estate in a probate case. The complaint stated that Betty Burns Paden formerly represented the estate for over 20 years, but she had been disbarred. The complaint alleged that Betty paid defendant \$1,000 in two \$500 checks as a retainer for his representation of Ernest. Defendant met with plaintiffs and discussed the case. Plaintiffs assert that they called and wrote defendant asking him to file his appearance and file a motion to vacate a summary judgment in the estate case or to return the retainer. The complaint further alleged that defendant "refuses to work on the case, refuses to answer the telephone calls of Plaintiffs, and refuses to return the one thousand dollars (\$1,000.00) retainer." Plaintiffs state that they hired another attorney for the probate case. Plaintiffs requested the return of the retainer paid to defendant.

¶ 4 On March 14, 2011, the trial court conducted a bench trial and entered judgment for plaintiffs for \$400 with costs allowed. The record on appeal does not contain any transcripts from the bench trial.

¶ 5 In April 2011, plaintiffs filed a motion to reconsider the March 14, 2011, order for retainer fee, interest, attorney fees and sanctions. In their motion, plaintiffs realleged that defendant had been hired to represent Ernest in a probate case and was paid a \$1,000 retainer, but failed to perform any work on the case. The motion alleged that defendant appeared at trial without any papers to substantiate his claim of time spent on the case nor could he recollect what he did on the case. The motion stated that defendant testified that he tried to obtain the court file

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from the clerk of the circuit court, but the clerk was unable to find the file. Plaintiffs allege that defendant told the trial court that he charged \$300 an hour, but plaintiffs assert that he told them he would charge \$200 an hour. Plaintiffs contend that \$600 is not fair and reasonable compensation for defendant's work in this case. Plaintiffs attached Ernest's letters of office appointing him as executor, copies of the retainer checks, a letter from Ernest to defendant about the probate case, and the appearance of another attorney and notice of motion in the probate case. In June 2011, the trial court denied plaintiffs' motion to reconsider.

¶ 6 This appeal followed.

¶ 7 On appeal, plaintiffs argue that the trial court abused its discretion in its order awarding them \$400 and costs of the requested \$1,000. Plaintiffs frame the issues as a breach of fiduciary duty by defendant and that the trial court abused its discretion "by guessing the amount of time" defendant spent on the estate case. Plaintiffs also request that defendant should be sanctioned for "not telling the truth with conflicting testimony in circuit court testimony and with his ARDC statements in a letter" concerning the estate case. Although defendant has not filed a brief in response, we may consider the appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 8 As previously noted, the record on appeal does not contain the transcripts of the bench trial for our review. Plaintiffs, as the appellants, bear the burden of providing a sufficiently complete record to support their claim or claims of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Moreover,

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any doubt arising from the incompleteness of the record will be resolved against the appellants.

Foutch, 99 Ill. 2d at 392. Further, “ ‘[t]rial courts should not permit litigants to stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling.’ ” *Universal Scrap*, 337 Ill. App. 3d at 508 (quoting *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248 (1991)).

¶ 9 Without the transcripts or a bystander's report of the bench trial in this case, we are unable to review the question of whether the trial court abused its discretion in its judgment order. Since the burden is on the plaintiffs as the appellants to provide a complete record on appeal, we must presume that the trial court properly awarded plaintiffs \$400 and costs and no abuse of discretion occurred. Further, we decline to consider any sanction against defendant without a complete trial record.

¶ 10 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 11 Affirmed.