

No. 1-11-2162

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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CALVIN SCOTT,	)	APPEAL FROM THE
Plaintiff-Appellant,	)	CIRCUIT COURT OF
	)	COOK COUNTY
	)	
v.	)	No. 09 M1 303137
	)	
TIMOTHY BELCIK and THE CITY OF CHICAGO,	)	HONORABLE
a Municipal Corporation,	)	THOMAS J. LIPSCOMB,
Defendants-Appellees.	)	JUDGE PRESIDING.

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PRESIDING JUSTICE STEELE delivered the judgment of the court.  
Justices Neville and Salone concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Plaintiff appeals from a judgment in favor of defendants in a negligence case arising from a vehicle collision. Plaintiff fails to provide an adequate record on appeal to review his alleged errors. The judgment of the circuit court of Cook County is affirmed.

¶ 2 Following a jury trial in the circuit court of Cook County, plaintiff Calvin Scott appeals from a judgment in favor of defendants, Chicago police officer Timothy Belcik and the City of Chicago (City), in a negligence case arising from a vehicle collision. On appeal, Scott argues the

trial court erred in refusing to enforce trial subpoenas for two witnesses; the trial court erred in refusing to grant a mistrial based on the refusal to enforce the subpoenas; and Scott was entitled to judgment notwithstanding the verdict or a new trial. We conclude Scott has failed to provide an adequate record on appeal to review his alleged errors and affirm the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the following facts. On October 28, 2009, Scott filed a complaint against Officer Belcik and the City sounding in negligence. The complaint, as amended, alleged that on or about November 18, 2008, Scott was driving west in the 3800 block of Roosevelt Road in Chicago and Officer Belcik was driving a police vehicle in the same vicinity and direction. Scott alleged Officer Belcik's vehicle collided with his while making an illegal U-turn without the lights or siren activated. Scott alleged Officer Belcik: (1) negligently operated the vehicle; (2) drove at an excessive speed; (3) failed to equip the vehicle with proper brakes; (4) failed to give warning he was approaching Scott's car; (5) failed to maintain a proper lookout or take evasive action to avoid the collision; and (6) made an illegal U-turn.

¶ 5 Officer Belcik and the City answered the complaint and asserted contributory negligence and immunity under section 2-202 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/2–202 (West 2008)), which provides a "public employee is not liable for the act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct."

¶ 6 The case proceeded to a jury trial. The record on appeal contains no transcript of the trial proceedings. On April 8, 2011, the circuit court entered judgment on the verdict in favor of

Officer Belcik and the City. The same day, the circuit court also entered an order denying Scott's motions to enforce trial subpoenas for Crasseros Jackson and Wanda McGee and for a mistrial based on the denial of the motion to enforce subpoenas.

¶ 7 On April 21, 2011, Scott filed a posttrial motion for judgment notwithstanding the verdict or a new trial. Scott argued the trial court erred in refusing to enforce the trial subpoenas for independent witnesses who could corroborate Scott's testimony. Scott also argued Officer Belcik and the City failed to prove Officer Belcik was engaged in the execution or enforcement of law at the time of the collision.

¶ 8 On June 30, 2011, the trial court entered an order denying Scott's posttrial motion. According to the order, both Scott and an independent witness testified at trial that the police vehicle's lights and siren were not activated at the time of the collision. Three police officers, including Officer Belcik, testified the lights and siren were activated, but Officer Belcik was impeached on this point by his own report of the collision.

¶ 9 The trial court indicated that despite the lack of a formal offer of proof, it was apparent the testimony from additional witnesses would be that the police vehicle's lights and siren were not activated. The trial court ruled this testimony would have been cumulative, also disputing that Jackson and McGee would have been unimpeachable witnesses. The trial judge also ruled that the question of whether the lights and siren were activated is mutually exclusive of whether Officer Belcik was engaged in the execution or enforcement of law at the time of the collision. The trial judge noted the jury answered special interrogatories finding Officer Belcik was engaged in the enforcement of law and that Scott was not contributorily negligent. Thus, the trial

judge concluded that even with the additional testimony, the verdict was not contrary to the manifest weight of the evidence and the evidence viewed most favorably to the defendants did not so overwhelmingly favor Scott that no contrary verdict could ever stand.

¶ 10 On August 1, 2011, after the circuit court denied Scott's emergency motion to reconsider, Scott filed a timely notice of appeal to this court.

¶ 11 DISCUSSION

¶ 12 On appeal, Scott argues: (1) the trial court erred in refusing to enforce trial subpoenas for Jackson and McGee; (2) the trial court erred in refusing to grant a mistrial based on the refusal to enforce the subpoenas; (3) the jury verdict was against the manifest weight of the evidence; and (4) the evidence, when viewed in the light most favorable to the defendants, so overwhelmingly favored Scott that no contrary verdict could ever stand.

¶ 13 Officer Belcik and the City respond that Scott fails to meet his burden as appellant to present a sufficiently complete record for review. *E.g., Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Id.*

"Without an adequate record preserving the claimed error, the reviewing court must presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law." *Id.* at 157. "'Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.'" *Id.* (quoting *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)).

¶ 14 We agree with Officer Belcik and the City. All of Scott's arguments on appeal, including those for judgment notwithstanding the verdict or a new trial, ultimately rest in some measure on

the trial judge's refusal to enforce trial subpoenas for Jackson and McGee. However, the record on appeal does not contain: (1) the subpoenas of Jackson and McGee; (2) motions to enforce those subpoenas; (3) transcripts of any argument on any motions to enforce those subpoenas; (4) offers of proof relating to the subpoenas; and (5) trial transcripts containing the testimony and evidence presented to the jury. Given the record on appeal before us, it is impossible for this court to determine whether the trial judge committed reversible error in failing to enforce the subpoenas or whether a mistrial should have been granted on that basis. Similarly, absent the trial transcripts or a certified bystander's report pursuant to Supreme Court Rule 323 (eff. Dec. 13, 2005), this court cannot determine whether the jury verdict was against the manifest weight of the evidence or whether the evidence, when viewed in the light most favorable to the defendants, so overwhelmingly favored Scott that no contrary verdict could ever stand.

¶ 15

#### CONCLUSION

¶ 16 In short, Scott has failed to present a record on appeal adequate to review the alleged errors. Accordingly, this court must presume the circuit court had a sufficient factual basis for its rulings and that its orders conformed with the law. See *Corral*, 217 Ill. 2d at 157. Thus, the judgment of the circuit court of Cook County is affirmed.

¶ 17 Affirmed.