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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CHARLES DANA,)	Appeal from the Circuit Court
)	of Winnebago County.
Plaintiff-Appellant,)	
)	
v.)	No. 09 L 362
)	
TOP DIE CASTING COMPANY, INC.,)	Honorable
)	J. Edward Prochaska
Defendant-Appellee.)	Judge, Presiding

JUSTICE BIRKETT delivered the judgment of the court, with opinion.
Justices Schostok and Hudson concurred in the judgment and opinion.

ORDER

¶ 1 *Held:* In plaintiff's suit to collect unpaid sales commissions, the trial court did not err in finding that there was no governing contract or agreement between the parties on the earning of commissions and, therefore, that the common-law procuring cause rule applied. The court also did not err in further determining that plaintiff was not the procuring cause of the sales in question because the evidence failed to establish that he either procured the client or his efforts resulted in any sales.

¶ 2 Following a bench trial, the trial court entered judgment against plaintiff, Charles Dana, on his complaint against defendant, Top Die Casting Co., Inc., for unpaid sales commissions. For the following reasons, we affirm.

¶ 3 **BACKGROUND**

¶ 4 Defendant is in the tool and die business. Plaintiff worked as a salesperson for defendant from 2001 until his involuntary termination in 2008. In September 2009, plaintiff initiated this lawsuit, and, in March 2010, filed his amended complaint, which brought counts. Count I alleged that plaintiff and defendant had an oral agreement on compensation, which included a salary and commissions. Specifically, defendant “was to pay the Plaintiff *** [a] salary of \$62,000 per year plus a commission of 2% for every contract he procured and/or developed and for which parts were produced and shipped to the respective buyer.” Plaintiff alleged that, when his employment was terminated, defendant wrongfully withheld \$70,382.51 in commissions. Count II incorporated the allegations of count I and asserted that the withholding of commissions was in violation of the Illinois Wage Payment and Collection Act (Wage Act) (820 ILCS 115/1 *et seq.* (West 2010)). Count III alleged that defendant “would be unjustly enriched if [it] were allowed to keep the commissions earned by [plaintiff].”

¶ 5 In September 2011, plaintiff moved for summary judgment. In December 2011, the trial court denied the motion. On June 26, 2012, a bench trial was held. Plaintiff presented alternative grounds for his entitlement to the \$70,382.51 in sales commissions. First, he argued that he was owed the commissions under an oral contract with defendant that prescribed when sales commissions would be earned. Second, plaintiff invoked the “procuring cause” rule, under which “a party may be entitled to commissions on sales made after the termination of employment if that party procured the sales through [his] activities prior to termination.” *Schackleton v. Federal Signal Corp.*, 196 Ill. App. 3d 437, 444 (1989). The procuring cause rule applies “unless a contract between the parties expressly provides when commissions will be paid.” *Id.*

¶ 6 When the proofs were opened at trial, the parties stipulated to the following facts:

- (1) “On July 27, 2001[,] [plaintiff] was hired by [defendant] for the position of salesperson.”
- (2) “[Plaintiff] was compensated by [defendant] for his work by payments of a salary and commission as an employee of [defendant].”
- (3) “On January 18, 2008, [plaintiff’s] employment was terminated by [defendant].”
- (4) “[Defendant] did not pay [plaintiff] for any commissions after his termination date.”
- (5) “There was no written contract of employment between [plaintiff] and [defendant].”
- (6) “There is no written policy regarding commissions.”
- (7) “[Plaintiff] was paid \$4,800 after termination.”

The \$70,382.51 in commissions to which plaintiff has laid claim were from defendant’s accounts with two clients: Stanadyne and John Deere. The focus on appeal, as at trial, is on the commissions from the Stanadyne account. Accordingly, we express no opinion on plaintiff’s entitlement to commissions from the John Deere account, and affirm the trial court’s judgment as to the entire \$70,382.51.

¶ 7 Although the testimony was unclear on the point, apparently plaintiff was assigned the Stanadyne account in 2005 or 2006. In any case, there is no dispute that plaintiff had the Stanadyne account for the entirety of 2007, during which time the events occurred upon which plaintiff bases his claim to commissions. Plaintiff introduced into evidence his monthly commission reports for 2007. The witnesses at trial agreed generally on defendant’s commissions policy. Each of defendant’s salespeople received monthly commission reports that arranged in chronological order the date on which orders for parts were invoiced. Each part was identified by a unique number and assigned an “internal expiration” period. The period was bounded by two dates: the “start” date, which was the date when the part was first shipped to the customer, and the “end” date, which fell

18 months after the first shipment. The salesperson would receive a commission when the part was first shipped to that customer. Also, the salesperson would receive a commission on any additional order of that part shipped to that customer within the 18-month window. As the witnesses explained, any “new part” ordered by the same or another customer would trigger its own 18-month window. Plaintiff’s commission reports reflect several “start” dates in 2007 associated with his Stanadyne account. However, some of defendant’s witnesses testified that they never regarded plaintiff as having truly earned any commissions under the Stanadyne account, because plaintiff had no role in acquiring Stanadayne was a customer. Plaintiff did receive commissions on the Stanadyne account during his employment, but was paid no commissions after his employment ended.

¶ 8 There were four witnesses at trial: plaintiff, Gerald Lindmark, defendant’s former sales manager, Brad Lindmark, defendant’s current sales manager, and Jerry McCurdy, one of defendant’s owners.

¶ 9 Gerald Lindmark testified that he was defendant’s sales manager when defendant was hired in 2001. Gerald remained as sales manager until 2006, when his son Brad took the position. Gerald testified generally about defendant’s policy on commissions and the monthly commission reports given to the sales staff:

“Q. So [there was] a continuing process of working with the client especially because during that 18 months, this salesperson would want to make sure that part was continuing to be ordered and they were good orders because he got a commission; correct?

A. Correct.

* * *

Q. So once the part starts to ship, the salesperson has done everything necessary to get that part to the customer; correct?

A. No, they normally would stay in contact to make sure that we were up to date on anything.

Q. *** [O]ther than staying up to date, they've done everything they needed to get their commissions? They've done everything they could?

A. Correct.”

¶ 10 Gerald testified that he preceded plaintiff as the salesperson assigned to the Stanadyne account. Gerald explained how Stanadyne became defendant's customer in the summer of 2005. According to Gerald, Stanadyne had approached Gerald's prior employer, Madison Kipp (MK), about manufacturing parts. At the time, Stanadyne was manufacturing its parts internally but wished to hire out the work. MK suggested to Gerald that defendant assume production of some of Stanadyne's lower volume parts orders while MK handled the higher volume orders. The proposal was discussed during “extended” meetings between MK, Stanadyne, and defendant. Ultimately, Stanadyne and defendant “put a whole package together.” Gerald identified defendant's exhibits Nos. 2 and 3 as copies of a June 16, 2005, spreadsheet listing the parts that Stanadyne wanted defendant to manufacture.

¶ 11 Gerald further testified that he was initially the salesperson assigned to the Stanadyne account. Several months later, “management” assigned plaintiff the account. According to Gerald, management wanted to provide plaintiff commissions from the Stanadyne account so that he would “know what commissions would be like.” Plaintiff “never had much of a commission ever, never obtained any business—many accounts or business or any parts.” As sales manager, Gerald

observed plaintiff to be “very disorganized.” Plaintiff would lose documents and fail to keep current on the accounts he was handling. The Stanadyne account was supposed to be “an incentive to motivate [plaintiff] to move ahead.” Gerald testified that, normally, a salesperson is “involved with [the] client trying to get orders,” with commissions being the incentive for the salesperson to obtain new business, either by enlisting new customers or obtaining additional orders from existing customers. The approach was “totally different” in the case of plaintiff and Stanadyne. By the time plaintiff took over the Stanadyne account, “[a]ll the negotiations were completed,” “[a]ll the business had been obtained,” and “[i]t was just a matter of falling into place.” Defendant already “knew of all the parts that [it] [was] ever going to run for Stanadyne.”

¶ 12 Asked if, while assigned to the account, plaintiff would “travel and meet with” Stanadyne personnel, Gerald answered, “On a very limited basis. I can only name like maybe one time.” Gerald testified that the Stanadyne account was assigned back to him once plaintiff was terminated. Gerald immediately began to receive all of the commissions on the Stanadyne account, even the commissions for new parts that were shipped while plaintiff was handling the account.

¶ 13 Jerry McCurdy testified to defendant’s general policy on commissions and to the monthly commission reports given to sales staff. McCurdy defined a “new part” as one for which defendant builds a new die. This “new part” is given a part number, and a commission is paid on that part. A commission, however, is also paid for “parts that come off an existing die by interchanging cores.” This was the case with the Stanadyne parts. Stanadyne, having previously manufactured the parts, furnished defendant the dies for the parts. Defendant adopted the numbers Stanadyne used for the parts. McCurdy was shown plaintiff’s commission report for December 2007. Referring to part number 34220 on the report, McCurdy said:

“That die runs about 10 or 12 different part numbers just by switching some cores. So we run the die; but then, *** when we switch the cores and make another part number, if we had never made it before, then it would be a part we would pay commission on. But it’s not a new part number. The only time it’s a new part number is when we build them a new tool for it. This part number was already established when we got all the work from Stanadyne.

*** When there’s a part and we run it, okay—like these dies, if we run it and we’ve never run it before, if we run this part and it’s the first time we run it, then we start paying a commission on it. But it’s not a new part.”

¶ 14 McCurdy testified that Gerald was “[o]riginally the salesperson that procured the [Stanadyne] account.” The arrangement with Stanadyne was for defendant to assume the manufacture of parts that Stanadyne was currently producing on its own. McCurdy noted that eventually the account was assigned to plaintiff. Asked why plaintiff received commissions for the Stanadyne orders though he did not procure Stanadyne as a customer, McCurdy explained:

“[M]y brother and I decided to turn it over to [plaintiff] to show him that—what he could do if he got out there and hustled and got some new accounts, he would get commissions from those accounts.

*** [I]t was basically an incentive to show him what he could get because he had been with us like four years and only procured a couple accounts that didn’t amount to that much.”

McCurdy wanted “[t]o try and get [plaintiff] enthused, to see what’s going to happen when he gets out and—gets out from behind the desk and gets out on the road and hits the bricks and brings in

new accounts.” McCurdy confirmed that defendant’s exhibits No. 2 and 3 were copies of the June 2005 spreadsheet listing the parts that Stanadyne wanted defendant to manufacture. McCurdy furnished plaintiff with the spreadsheet immediately after assigning him the Stanadyne account. From the beginning, then, plaintiff was aware “that those parts on that sheet had already been *** part of what [defendant] was going to produce for Stanadyne” and that Gerald “was involved in getting those parts.” McCurdy described plaintiff’s work on the Stanadyne account once he was assigned:

“Q. *** [W]hat involvement did [plaintiff] have in the process after he was assigned to the account?

A. After he was assigned the account, he basically made a couple trips—well, we made one trip to Connecticut and met a couple people that we hadn’t met before. Then we made a trip down to Stanadyne. He went with me to look at some of the tools that were going to be put on the truck and shipped up here—or up to our shop.

Q. But at that point in time had Stanadyne already committed to—

A. Right. We had already quoted the part, and they had give[n] us purchase orders to transfer the tooling.

Q. So that had already—that process had already been completed?

A. Right.”

McCurdy denied that plaintiff introduced him to a Stanadyne employee named Bob Bowden. Rather, McCurdy and plaintiff met Bowden together during a trip to Stanadyne.

¶ 15 McCurdy described plaintiff’s role in dealing with some “capacity issues” in the production of parts for Stanadyne:

“The capacity wasn’t a Top Die issue. The capacity was a Stanadyne issue because so many parts come out of their dies. Like I mentioned earlier, one die will maybe make eight to twelve parts. So if they want one part number that they want and it comes out of that die, then they call up and say, I need another part number, I would call them or I’d have [plaintiff] call them, find out, which one do you want first because we can only make one at a time. We have one die that makes all these different part numbers.”

McCurdy also testified that even after plaintiff was assigned the Stanadyne account, his work habits did not change. Plaintiff just “sat in his office, didn’t do anything.” McCurdy had to “tell [plaintiff] to call the customers.” McCurdy issued plaintiff several written warnings. Eventually, plaintiff was terminated. Defendant did not pay plaintiff any commissions following his termination. According to McCurdy, defendant’s policy is to pay no commissions to salespersons who are terminated. As of plaintiff’s termination date, the commissions on the Stanadyne account went to Gerald, who took over the account. When asked how that “worked with [defendant’s] policy” on commissions, McCurdy stated:

“Well, [plaintiff] had also got some of the commissions on parts that were run during [Gerald’s time on the account]. So just like we cut it off and we gave it to [plaintiff], he got some of the commissions that should have been [Gerald’s]. [Plaintiff] got them. And when [plaintiff] left, then we just turned it over to [Gerald].”

According to McCurdy, “basically, whoever has taken over the account starts getting the commissions,” and “[w]e just start it or stop it right when that salesman comes or goes.”

¶ 16 Brad Lindmark testified that he succeeded his father, Gerald, as sales manager in January 2007 and still holds that position. Like Gerald and McCurdy, Brad testified about defendant's general policy on commissions:

“Q. *** [A]s we see [from the commission reports], when [plaintiff] was working with Stanadyne as the salesperson, new parts were ordered by Stanadyne, and [plaintiff] was given commission[s] based on those new part orders being shipped, correct?”

A. Yes.

* * *

Q. Now, once a commission starts, this 18 months, the way a salesperson would get more commission[s] for that part is if there are more orders during the 18 months?

A. Yes.

Q. So if there's only the initial order and that's it, that's the only commission he'd get for 18 months?

A. Correct.

Q. But if he worked with that client and got that part reordered or got new orders for that same part, he would continue to get a commission for that 18 months?

A. As long as it's within the 18 months, yes.”

¶ 17 He testified further:

Q. *** “[W]hen you do these commission reports, you, a sales manager—when you're putting that start date down, do you make sure your salesperson has done everything they can up to that point in order to get that order in?”

A. Most of the time, yes.

Q. So before you put that date down, you know, that first shipment, you've made sure your salesperson's completed the order, done everything they can to get that order to ship?

A. Yes, and then I match it up against the shipments. I run a shipment report; and then if it's a newer part, you enter it in the—onto this report.

* * *

Q. The salesperson comes to you. Do they tell you, 'Hey, I have a new part; it's ready to ship'?

A. Not all the time, no.

Q. Do they give you the heads up that it might ship, or how do you know it's—

A. I know it ships based on the shipping report.

Q. You get—

A. More times than not, I know when there's a new part coming through, yes.

Q. And you know by putting this on the commission report that that salesperson has earned that commission?

A. I don't know. You'd have to define 'earn.'

Q. Have they done everything necessary to get that part to ship?

A. I would hope so.

Q. And by putting it on the commission report, you felt that they've earned the commission?

A. I enter it into the report when I see it in the shipping. Whether they earn it or not is not my decision.

Q. But you put it on here, and this commission report goes to payroll, and they pay them; correct?

A. Correct.

Q. So they get paid for this commission?

A. Yes.”

¶ 18 Brad testified that he was plaintiff’s supervisor while plaintiff was handling the Stanadyne account. Asked about plaintiff’s general competence as a salesperson, Brad stated: “Not a lot of getting out and getting new customers; kind of unorganized.” According to Brad, plaintiff had no role in “procuring the [Stanadyne] account.” Plaintiff was assigned the account “past [the] original contact point,” and “production” was already underway. Brad could not recall if plaintiff ever visited Stanadyne’s offices while assigned to the account. Brad acknowledged that defendant’s commission reports reflect that Stanadyne’s orders increased while plaintiff was assigned to the account. Brad testified further about the reports:

“Q. *** [A]ll those commissions reports were prepared by you; is that correct?

A. Yes.

Q. And with regard to those reports, *** did you do anything to confirm that [plaintiff] earned or—

A. No, because I knew that they had been given to him by ownership.

Q. And what do you mean by that?

A. Ownership decided to turn over the account to [plaintiff].

Q. After the account was already procured?

A. Yes.”

¶ 19 Elsewhere in his testimony, however, Brad distinguished between “old” and “new” parts ordered by Stanadyne and suggested that plaintiff may have had some role in procuring orders of “new” parts from Stanadyne:

“Q. [W]hen [plaintiff] was working with Stanadyne as the salesperson, new parts were ordered by Stanadyne, and [plaintiff] was given commission based on those new part orders being shipped, correct?”

A. Correct.

* * *

Q. During the time of 2007 when you were [plaintiff’s] sales manager, he continued to work with Stanadyne to get their parts up and out and shipped, correct?”

A. Yes.

* * *

Q. What were your observations of what [plaintiff] did as a salesperson assigned to that account?”

A. I don’t think a lot. He didn’t do a lot.

THE COURT: What, if anything, did he do to procure the parts that are listed in the commission report for Stanadyne?”

THE WITNESS: I don’t believe he did much at all because Stanadyne was transferring all this work to us originally. It just took time for it to come in because they didn’t want to transfer all the jobs at once.

THE COURT: So you're saying this was [*sic*] pre-existing parts that you were already expecting?

THE WITNESS: We were expecting them from original meetings.

THE COURT: Before the account was turned over to [plaintiff]?

THE WITNESS: Yes. There could be a couple of them here and there that were newer ones, but—

THE COURT: Follow-up?

REDIRECT EXAMINATION

* * *

Q. Is there anything that would help you identify which of the new parts in the— versus the parts that were originally obtained by [defendant]?

A. Well, originally, there is—I believe there's a spreadsheet made of one family— call them 'Headers,' [which] would make ten different part numbers.

Q. So there's a spreadsheet that identifies the original parts that were assigned that [defendant] was taking over; correct?

A. Yes, I believe so.”

Brad was then shown the June 2005 spreadsheet, which he identified as “the list of parts that already had been obtained by [defendant] to create for Stanadyne.” The examination continued:

“Q. So if you were to take that list and compare them to the commission statements, you would be able to determine which were the old parts versus the new parts?

A. Yes.

MS. SILVESTRI (defendant's attorney): Nothing further, your Honor.

REDIRECT EXAMINATION

BY MR. WHITMAN (plaintiff's attorney):

Q. So why did you pay [plaintiff] the commission then if, in fact, they were old parts? If, in fact, your testimony is, a salesman is only paid commission on new parts and now you're saying these are old parts, then why was [plaintiff] paid a commission?

A. That was an ownership decision."

¶ 20 In his testimony, plaintiff was asked if he brought any "new customers" to defendant. He referenced only one company: Prince Manufacturing from Iowa. Plaintiff testified that he was assigned the Stanadyne account in September 2005. He knew at the time that Stanadyne was "an existing account." Defendant contracted with Stanadyne to manufacture some of the parts that Stanadyne had been producing internally. Asked if he was "instrumental in [Stanadyne's] change, from doing it themselves to having [defendant] do it," plaintiff replied,

"Yes, because I was the one that introduced Jerry [McCurdy] to Bob Bowden, who was the commodity outsourcing person [for defendant]. And actually I think it was in November of 2006 that we went there, and they had made the decision that China wasn't coming along as fast as they wanted it, so they asked us if we would manufacture the parts for a year until they could get China further along.

Q. Okay. So they actually had parts manufactured in China?

A. They had a few, yes. But they had quality problems.

Q. And they approached you about having [defendant] manufacture those parts?

A. Correct."

Plaintiff elaborated on his trips to Stanadyne. In June 2006, while in Connecticut for personal reasons, he decided to visit Stanadyne's offices and introduce himself. On that occasion, he met a purchasing agent named Brady. Subsequently, plaintiff returned to the Connecticut offices with Jerry McCurdy. Plaintiff introduced McCurdy to Bob Bowden at Stanadyne. Plaintiff and McCurdy next traveled to Stanadyne's North Carolina offices, where they "looked at some of the different tooling that [Stanadyne] wanted to start producing parts." Plaintiff was not aware at the time that "this tooling *** was something [defendant] already knew about." At this meeting in North Carolina, defendant "receive[d] new parts orders." Stanadyne "shipped the tooling back to us, and then the whole process began." Asked when he first became aware of Stanadyne's decision to cease manufacturing its own parts, plaintiff replied, "Initially the process probably started like in November of '06 because at that time is when they had figured out that China wasn't going to be able to come on board as fast as they thought."

¶ 21 Plaintiff testified that he received the June 2005 spreadsheet sometime after his visit to Stanadyne's offices in June 2006. Plaintiff used the spreadsheet as a "planning tool" to determine which parts could be made from which dies. He did not recall whether he was "ever told that that part or this new tooling is already on the spreadsheet." At another point, however, plaintiff positively affirmed that he was never told that any of the parts on the spreadsheet were "old parts" or "that [the] Stanadyne parts would not be considered new parts." He was never told that the commissions he received on the Stanadyne account were "gifts." Shown his commission reports, plaintiff testified that he "d[id] everything as a salesman in order to get those parts shipped." According to plaintiff, upon his termination he was told that he would receive no further

commissions. He had not been told previously that Stanadyne salespersons received no commissions after termination.

¶ 22 Plaintiff testified that, as he understood defendant's commissions policy, "even if the [salesperson is] assigned a client, as long as [he] got a new part order and then [it] shipped, [he] would get a commission."

¶ 23 After trial, the court issued a memorandum opinion in which it ruled for defendant. In determining whether plaintiff earned the claimed commissions, the court employed the "procuring cause" rule as it was articulated and applied in three cases: *Houben v. Telular Corp.*, 231 F.3d 1066 (7th Cir. 2000), *Solo Sales, Inc. v. North America OMCG, Inc.*, 299 Ill. App. 3d 850 (1998), and *Technical Representatives, Inc. v. Richardson-Merrell, Inc.*, 107 Ill. App. 3d 830 (1982). The court said:

"In the present case, there was no written employment contract between [plaintiff and defendant]. However, it was undisputed that he was paid \$1,000 per week plus two percent (2%) on all earned commissions on new parts sold and shipped for a period of eighteen (18) months. Plaintiff claims at least \$70,382.51 in damages *** based on his commission report from December 2007, which assumes that his commissions would have remained at the same level. Plaintiff is also seeking to recover a two percent (2%) penalty plus attorneys' fees and costs pursuant to the [Wage Act].

Based on the totality of the circumstances, the Court finds that [plaintiff] has failed to meet his burden of proving a violation of the [Wage Act]. In all of the cases cited by Plaintiff in his trial memorandum [*i.e.*, *Houben*, *Solo Sales*, and *Technical Representatives*],

the Court found that the commissions were earned as a direct result of the sales efforts of the employee ***.

Here, by contrast, the evidence establishes that [plaintiff] neither brought Stanadyne to his employer nor did he procure the sales. Rather, the Stanadyne account was obtained through the efforts of [Gerald Lindmark]. Although Stanadyne's parts orders increased after the account was assigned to [plaintiff], he has not proven that his sales efforts lead [sic] to the increase in new parts ordered. Simply because [defendant's] ownership paid him commissions on Stanadyne's sales prior to his termination does not establish that [plaintiff] earned them through his sales efforts. On the contrary, it appears that the lucrative Stanadyne account was given to him in an ill-fated attempt to motivate him to become [sic] a more productive salesman for the company. The evidence established that [defendant's] attempt to motivate [plaintiff] failed, and that he was terminated for cause in early 2008. Under the evidence presented at trial, [plaintiff] has failed to prove that the Stanadyne business was obtained based on his sales efforts, nor has he proven that he is entitled to commissions on the new parts ordered by Stanadyne."

¶ 24 Plaintiff timely appealed.

¶ 25 ANALYSIS

¶ 26 Plaintiff's first contention on appeal is that the trial court erred in denying his motion for summary judgment. Since, however, plaintiff fails to cite any of the pleadings or supporting documents submitted at the summary judgment stage, he has forfeited this contention. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) ("[a]rgument *** shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.").

¶ 27 The remainder of plaintiff's challenge is directed at the court's disposition of his claim at trial. At the outset, we point out that, while plaintiff makes the occasional accusation that defendant has been unjustly enriched (as alleged in count III of the complaint), plaintiff has forfeited this contention by failing to cite any legal authority for it. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 28 Plaintiff's main contention on appeal is that he proved at trial that he was the procuring cause of the \$70,382.51 in commissions he seeks. Where, as here, the trial court's ruling on a procuring-cause issue depends on credibility determinations and the weighing of evidence, we will upset that ruling only if it is against the manifest weight of the evidence. *Scheduling Corp. of America v. Massello*, 151 Ill. App. 3d 565, 570 (1987). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re A.P.*, 2012 IL 113875, ¶ 17.

¶ 29 Plaintiff asserts that the procuring cause rule applies because "[t]here was no written contract between the parties" and "no written policy regarding commissions nor the cessation of those commissions upon the termination of a salesperson's employment with [defendant]." However, in arguing under the procuring cause rule, plaintiff relies on defendant's *oral* policy on commissions, which, in the most general terms agreed to by all witnesses, was that a 2% commission would be paid when a new part was initially sold and shipped, and then whenever that part was sold and shipped within an 18-month period commencing with the first sale and shipment.

¶ 30 "Under the procuring cause rule, a party may be entitled to commissions on sales made after the termination of a contract if that party procured the sales through its activities prior to termination ***." *Penzell v. Taylor*, 219 Ill. App. 3d 680, 689 (1991). "The procuring cause rule is an equitable doctrine that protects a sales person who is discharged prior to culmination of a sale but who has

done everything to effect the sale.” *Id.* “The procuring cause rule does not apply *** if the contract between the parties specifies when commissions are earned.” *Solo Sales*, 299 Ill. App. 3d at 852.

¶ 31 The trial court in this case apparently concluded that defendant had no consistent policy on commissions, and therefore applied the common-law procuring cause rule. In interpreting the decision below, we employ the principle that, where a trial court fails to detail all of its factual findings, “it will be presumed that the trial court found all issues and controverted facts in favor of the prevailing party.” *Schackleton*, 196 Ill. App. 3d at 443. Here, the trial court’s reasons for not awarding the commissions to plaintiff were that “he neither brought Stanadyne to his employer nor did he procure the sales,” but rather “the Stanadyne account was obtained through the efforts of [Gerald],” and “[a]lthough Stanadyne’s parts orders increased after the account was assigned to [plaintiff], he has not proven that his sales efforts lead [*sic*] to the increase in new parts ordered.” Notably, the trial court did not reject plaintiff’s claim because it accepted McCurdy’s testimony that defendant’s policy was to pay no commissions to terminated salespeople. Nor did the trial court appear to accept McCurdy’s testimony that, when a new salesperson is assigned to an account, he immediately takes over his predecessor’s future commissions on new parts shipped during the predecessor’s tenure. The reason, rather, that the court found plaintiff had no claim to the commissions is that he was involved neither in securing Stanadyne as a customer nor in procuring its orders. Whether Stanadyne actually had a policy to this effect is, to say the least, difficult to tell from the morass of testimony in this case. Defendant’s general policy on commissions as described by all four witnesses at trial seemed to assume that a salesperson who inherits an account from the originating salesperson would receive commissions on new parts generated during that successive tenure. Moreover, the witnesses identified nothing in plaintiff’s commission reports to suggest that

he had any less claim to the commissions indicated there than any other salesperson would have to the commissions reflected on his own commission reports. On the other hand, Gerald suggested that plaintiff's situation was "totally different" from the norm because, by the time he inherited the Stanadyne account, "[a]ll the negotiations were completed," "[a]ll the business had been obtained," and "[i]t was just a matter of falling into place." Gerald and Brad both suggested that that defendant's decision to withhold commissions from plaintiff after his termination was appropriate for the reason that plaintiff had never deserved any commissions under the account, since by the time he was assigned it, Gerald and others had already ascertained which and how many parts Stanadyne would need. Yet even Gerald and Brad gave no indication that Stanadyne was in the practice of limiting commissions on a particular account to the individual(s) who acquired that account. Lending more complication to the fact pattern is that neither Gerald nor Brad corroborated McCurdy's claim that it was defendant's policy not to pay commissions to a salesperson following termination.

¶ 32 The most plausible inference to be drawn from the court's findings is that the court simply declined to apply any of the testimony on how defendant's salespersons earned commissions, and opted instead to utilize common law principles alone. We are led to this conclusion by the fact that the trial court did not cite any practice or policy of defendant's in its analysis and by the fact that the standards the trial court utilized are consistent with the common-law principles applied in the authorities the court cited, *Houben*, 231 F.3d 1066, and *Solo Sales*, 299 Ill. App. 3d 850. (*Technical Representatives* is inapposite here, as the appellate court found the procuring cause rule inapplicable because the parties had a contract "expressly provid[ing] that plaintiff would receive commissions 'on sales during the period of this agreement.'" 107 Ill. App. 3d at 833.) Presumably, the court

found the evidence on defendant's practices and policies regarding commissions to be knotty and irreconcilable. This was well within the trial court's province as finder of fact.

¶ 33 In *Solo Sales*, the plaintiff, a sales representative for manufacturers, entered into an oral agency agreement in December 1994 with the defendant, a manufacturer. While the agency agreement was ongoing, the plaintiff approached a company, Dorco, about purchasing the defendant's machines. Dorco indicated that it wished to purchase three of the defendant's machines. *Solo Sales*, 299 Ill. App. 3d at 851. Robert Sears, the defendant's vice-president, testified in his deposition that, when the plaintiff informed him about Dorco's desire to purchase three machines, Sears replied, " 'That's crazy.' " *Id.* at 854. The court summarized the remaining relevant facts:

"Defendant was reluctant to sell three machines at once because of the substantial amount of money involved and the possibility that the machines would not perform as Dorco expected. In June 1995, instead of purchasing three machines, Dorco agreed to purchase one machine and lease a second machine with the option to return it to defendant if Dorco so desired. Dorco also had the option, however, of purchasing the second machine and a third machine, both at discounted prices. As part of the negotiation of the contract, plaintiff agreed to reduce its sales commission on all three machines from its typical 5% to 4 1/2%.

The original lease was for four months. Subsequently, Dorco and defendant agreed to extend the lease through March 1996. In December 1995, plaintiff terminated its agency relationship with defendant. In April 1996, pursuant to the June 1995 agreement, Dorco purchased the machine (the second machine) that it had been leasing. In January 1997, Dorco purchased the third machine contemplated in the June 1995 agreement. Defendant paid plaintiff its commission for the sale of the first machine and for the lease of the second

machine through December 1995. Defendant refused to pay plaintiff any commission for the lease payments or the sales of machines that occurred after December 1995. *Id.* at 851.

The plaintiff sued for unpaid commissions, and the trial court entered summary judgment in the plaintiff's favor for \$29,000 in commissions. *Id.* at 852.

¶ 34 The appellate court affirmed the summary judgment ruling. Disagreeing with the defendant, the court found that the plaintiff was the procuring cause both of the lease that was ongoing when the agency relationship ended in December 1995 and of the sale that occurred after that date. The court determined that the plaintiff “did everything it was required to do.” *Id.* at 854. First, the court applied the procuring-cause rule without reference to the parties' agreement on commissions. The court noted that, though the defendant had refused to sell Dorco all three machines at once, it did enter into an agreement whereby Dorco would purchase one machine with the option of leasing or purchasing two subsequent machines. “Thus,” held the court, “plaintiff clearly brought defendant a buyer that was ready, willing, and able to purchase the three machines, but defendant, for legitimate reasons or not, refuse to consummate the deal.” *Id.* at 854.

¶ 35 The court only then referenced the parties' agreement on commissions, noting: “Additionally, the structure of the agreement indicates that the parties contemplated that plaintiff would receive a commission for the sales of the second and third machines.” *Id.* at 854.

¶ 36 In *Houben*, the plaintiff was hired by the defendant in 1994, and the next year was given management of an account team devoted to selling products to Motorola. The plaintiff was told that her compensation would consist of salary and commissions. For several months, the plaintiff and her team competed to be selected by Motorola as its supplier for a large order from a telecommunications agency in Hungary. For three months during this period, the plaintiff was on

maternity leave but continued to communicate with her team. In the fall of 1995, the defendant publicly announced that Motorola had agreed to purchase \$100 million of the defendant's products in association with the Hungarian deal. *Houben*, 231 F.3d at 1070-71. In January 1996, the plaintiff informed the defendant that she would be taking a second maternity leave beginning in August of 1996. Later that month, the defendant fired her. In March 1996, Motorola issued its first purchase order to the defendant. The defendant refused to pay the plaintiff any commission from the Motorola purchases. The plaintiff sued for the unpaid commissions, and ultimately a jury awarded her \$98,000 in damages. *Id.* at 1070.

¶ 37 The appellate court affirmed the award of unpaid commissions. First, the court held that the plaintiff was owed the commissions under her compensation arrangement with the defendant. *Id.* at 1072-73. Second, the court noted that it “would reach the same result under the procuring cause doctrine” as articulated by Illinois courts. *Id.* at 1073. The court reasoned:

“Although Motorola placed no actual purchase order during Houben's tenure, Telular did win the competition to be Motorola's supplier on the deal and it publicized that fact several months before Houben's departure. One Telular executive testified that Telular's ‘victory’ in the Motorola Hungary deal constituted a ‘firm order’: ‘You would never go public like this [with a press release] if you didn't believe [the order] was firm.’ Telular's argument that Houben was a minor participant in the sale runs up against the fact that the company created a special sales team to focus on the Hungary deal and placed Houben at its head. She may not have been the salesperson on the ground in Hungary, but she was responsible for overseeing the work of the sales team and figuring out how to position Telular to get the contract.” *Id.*

¶ 38 The salespersons in *Solo Sales* and *Houben* were responsible for procuring the customers in the first instance. Here, by contrast, the evidence supports the trial court’s finding that plaintiff had no role in defendant’s acquisition of Stanadyne as a customer. It was not by plaintiff’s efforts that Stanadyne was presented to defendant as a “ready, willing, and able” buyer. *Solo Sales*, 299 Ill. App. 3d at 854. We recognize that neither *Solo Sales* nor *Houben* had occasion to address whether and how a salesperson who assumes an account *after* the customer and its initial business are acquired may prove his entitlement to commissions on subsequent business from that customer. We recognize that there are suggestions in the record that, during plaintiff’s tenure on the Stanadyne account, some parts were shipped that were not part of the original production package settled on before plaintiff was assigned the account. Plaintiff, however, does not identify those specific orders and what efforts, if any, he expended in procuring them. Instead, he claimed, without elaboration, that he was “responsible” for arranging all of the orders listed on his commission reports. *Solo Sales* and *Houben* require more specific proof of a salesperson’s involvement.

¶ 39 As authority for his position, plaintiff relies on *Schackleton*, *Massello*, and *Technical Representatives*. In each of these cases, the trial court relied on the employer’s commissions policy. See *Schackleton*, 196 Ill. App. 3d at 445-46; *Massello*, 151 Ill. App. 3d at 570; *Technical Representatives*, 107 Ill. App. 3d at 833-34. Here, the trial court evidently found no identifiable commissions policy applied by defendant that could resolve the issue at hand. We will not disturb that finding. For the foregoing reasons, the trial court’s application of the procuring cause rule was not against the manifest weight of the evidence.

¶ 40 Next, we note that plaintiff’s argument section on the procuring cause rule is followed by a section with this heading:

“Mr. Dana has also proven in the alternative [that] Top Die formed a contract for payment of his commissions by the production of the Monthly Commission Reports.”

Plaintiff proceeds to argue:

“Top Die had no written contract for employment with Mr. Dana. Top Die had no written policy regarding the earning or payment of commissions by its sales persons. However, Top Die had a business practice that spanned the company’s time in business going back many years. The payment of commission on new parts orders *** was in place for many years. While Mr. Dana was an at-will employee, Top Die put in writing the current commission earned and a promise of when that commission for futures orders for that specific would end. Thus, there was a meeting of the minds, which resulted in a promise which was solidified in writing by proof of the Monthly Commission reports, that Mr. Dana would be entitled to these commissions to a date certain.”

Plaintiff cites no authority to support this line of reasoning. Consequently, the contention is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 41 Lastly, we note that, though plaintiff has sued under the Wage Act, that statute provides no independent substantive ground for relief, but rather affords a procedural mechanism for recovering “compensation owed an employee by an employer pursuant to an employment contract or agreement between the 2 parties.” 820 ILCS 115/2 (West 2010). Plaintiff has failed here to establish that a contract or agreement arose from the commission reports.

¶ 42 CONCLUSION

¶ 43 The trial court’s judgment denying plaintiff’s claim for unpaid commissions was not against the manifest weight of the evidence. Accordingly, we affirm the judgment of the trial court.

¶ 44 Affirmed.