

enforcement officer who took her report of the incident had recommended that she obtain an order of protection as soon as possible. When issuing the emergency order of protection, the trial court set the cause for a March 14, 2013, hearing on the issuance of a plenary order.

¶ 4 On February 27, 2013, the respondent was served with a copy of the emergency order of protection and was summoned to respond within 14 days. On March 8, 2013, the respondent's attorney filed an entry of appearance and an answer denying the allegations contained in the verified petition.

¶ 5 On March 14, 2013, the cause proceeded to a plenary hearing as scheduled, and the trial court issued the plenary order of protection that the petitioner sought. The record on appeal does not contain a report of the proceedings, but the trial court's "preprinted order-of-protection form" (*People v. Leezer*, 387 Ill. App. 3d 446, 447 (2008)) indicates that the court entered the plenary order "having heard the evidence and the testimony of the petitioner under oath or affirmation." The form further indicates that the trial court entered the order on its finding that it was "necessary to grant the requested relief *** to protect the [p]etitioner." The trial court's docket entry, on the other hand, states as follows:

"Case called for hearing on ORDER OF PROTECTION. *** Both parties appear and agree to entry of Plenary Order of Protection[.] Clerk to provide copies to parties and to Sheriff ***."

¶ 6 On March 19, 2013, the respondent filed a timely notice of appeal. The notice alleged that the trial court had "considered improper evidence and allowed hearsay" and that the court's determination that the petitioner had met her burden of proof was against the manifest weight of the evidence.

¶ 7 ANALYSIS

¶ 8 As previously indicated, the record on appeal does not contain a report of the proceedings of the plenary hearing held on March 14, 2013. The record consists of a single

volume of common-law record and an envelope of exhibits that the petitioner ostensibly offered into evidence. In his brief on appeal, however, the respondent offers us a statement of facts pursuant to Supreme Court Rule 323(d) (eff. Dec. 13, 2005). The respondent's statement of facts purportedly sets forth a detailed account of what occurred at the March 14, 2013, hearing and further references specific findings that the trial court allegedly made. Nevertheless, we cannot consider the respondent's statement of facts as he suggests.

¶ 9 In relevant part, Supreme Court Rule 323 states as follows:

"(c) Procedure If No Verbatim Transcript Is Available (Bystander's Report). If no verbatim transcript of the evidence of proceedings is obtainable[,] the appellant may prepare a proposed report of proceedings from the best available sources, including recollection. *** The proposed report shall be served on all parties within 28 days after the notice of appeal is filed. Within 14 days after service of the proposed report of proceedings, any other party may serve proposed amendments or an alternative proposed report of proceedings. Within 7 days thereafter, the appellant shall, upon notice, present the proposed report or reports and any proposed amendments to the trial court for settlement and approval. The court, holding hearings if necessary, shall promptly settle, certify, and order filed an accurate report of proceedings. Absent stipulation, only the report of proceedings so certified shall be included in the record on appeal.

(d) Agreed Statement of Facts. The parties by written stipulation may agree upon a statement of facts material to the controversy and file it without certification in lieu of and within the time for filing a report of proceedings." Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005).

¶ 10 Here, in his brief on appeal, the respondent asserts the following in support of his claim that his statement of facts is presented pursuant to Rule 323(d): "A prepared version

of this statement of facts was delivered to [the petitioner] on July 10, 2013. No additions or corrections were recommended by [her]." This language tracks the language of the service and amendment provisions of Rule 323(c), but a bystander's report "may not be included in the record unless it is certified by the court or unless the parties stipulate to it." *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 655 (2007); see also *Landau & Associates, P.C. v. Kennedy*, 262 Ill. App. 3d 89, 91 (1994) ("Rule 323(c) expressly states that absent stipulation[,] only the report of proceedings certified in accordance with the rule shall be included in the record on appeal."); *People v. Gerwick*, 235 Ill. App. 3d 691, 693 (1992) ("In the absence of some designation on the document that the judge certified the facts recited therein to be accurate, the document may not be considered a bystander's report."). Notably, the respondent does not claim that the trial court certified his statement of facts, but by asserting that the petitioner did not recommend any amendments to the statement after it had been "delivered" to her, he seemingly intimates that she has somehow stipulated to it for purposes of Rule 323(d). Rule 323(d) specifically requires that a stipulation to an agreed statement of facts be in writing, however, and the respondent provides no such stipulation. Compare *People v. Morales*, 343 Ill. App. 3d 987, 989 (2003) (accepting the parties' purported bystander's report as an agreed statement of facts where the document was "signed by both parties"), with *Midwest Builder Distributing, Inc.*, 383 Ill. App. 3d at 657 ("A self-serving report presented by one of the parties cannot be used against the other party unless certified or stipulated to."), *Saint Joseph Hospital v. Downs*, 63 Ill. App. 3d 742, 744 (1978) (rejecting the defendants' statement of facts where the defendants failed to provide either of Rule 323's "acceptable substitutes" for a report of proceedings), and *People v. Karabatsos*, 131 Ill. App. 2d 33, 35 (1971) (rejecting the defendant's statement of facts where they "were not presented *** in any of the ways authorized by Supreme Court Rule 323(c) and (d)").

¶ 11 It is well-settled that "[i]t is the appellant's duty to present the court with a proper record on appeal, so that the court has an adequate basis for reviewing the decision below." *Midwest Builder Distributing, Inc.*, 383 Ill. App. 3d at 655. Moreover, where, as here, an appellant fails to file a report of the proceedings or a proper Rule 323 substitute, "we are required to assume that the evidence heard by the trial court was sufficient to support the judgment and the order entered." *Interstate Printing Co. v. Callahan*, 18 Ill. App. 3d 930, 933 (1974); see also *People v. James*, 337 Ill. App. 3d 532, 533 (2003) ("When the record presented on review is incomplete, a reviewing court must construe any omission in favor of the judgment rendered by the court below."); *Landeros v. Equity Property & Development*, 321 Ill. App. 3d 57, 63 (2001) ("In the absence of [a sufficient] record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law.").

¶ 12 We lastly note that the trial court's preprinted order-of-protection form indicates that the trial court issued the plenary order of protection after making relevant findings, but the court's docket sheet indicates that the order was entered by agreement. This perhaps suggests that at some point during the plenary hearing, the respondent stipulated that the evidence presented for the court's consideration was sufficient to sustain the issuance of the plenary order. *Cf. People v. Church*, 334 Ill. App. 3d 607, 614 (2002) (noting that pursuant to an *Alford* plea (*North Carolina v. Alford*, 400 U.S. 25 (1970)), a defendant pleads guilty as charged "yet continues to proclaim his innocence"). We can only speculate, of course, but in any event, we need not determine whether the order was entered on findings or by agreement. See *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 800 (2009) ("[T]he doctrine of invited error prohibits a party from taking one course of action at trial and then contending on appeal that the course was erroneous."); *Bidani v. Lewis*, 285 Ill. App. 3d 545, 550 (1996) ("Judicial estoppel provides that a party who assumes a particular position in a legal proceeding is estopped from assuming a contrary position in a subsequent legal

proceeding."); *Berymon v. Henderson*, 135 Ill. App. 3d 858, 865 (1985) ("[Agreed orders] are not appealable unless their entry resulted from fraudulent misrepresentation, coercion, incompetence of one of the parties, gross disparity in the position or capacity of the parties, or newly discovered evidence.").

¶ 13

CONCLUSION

¶ 14 For the foregoing reasons, the respondent's statement of facts is "considered stricken" (*Landau & Associates*, 262 Ill. App. 3d at 91), and whether entered on findings or by agreement, the trial court's judgment is hereby affirmed.

¶ 15 Affirmed.