

No. 1-14-1165

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

DEREK TUCKER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 13 M1 040475
)	
BJB PROPERTIES, INC.,)	Honorable
)	Kenneth E. Wright, Jr.,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

O R D E R

- ¶ 1 **Held:** Circuit court's dismissal of plaintiff's claim affirmed over his contention that the trial court improperly denied his motion for continuation and dismissed his claim.
- ¶ 2 Plaintiff Derek Tucker, *pro se*, appeals from an order of the circuit court of Cook County dismissing with prejudice the complaint he filed against defendant, BJB Properties, Inc. He

contends that the court abused its discretion in denying his oral motion for a continuance, and improperly construed the record in favor of defendant on its motion to dismiss.

¶ 3 The record shows that plaintiff is a tenant in a building managed by defendant. On October 11, 2013, plaintiff filed a *pro se* complaint alleging that while in defendant's care and control, his bicycle went missing from the bicycle storage area on its property. Plaintiff sought to recover the cost of the bicycle and fees for rent overpayments. Defendant was served by a special process server on March 6, 2014, and trial was set for March 25, 2014. On that date, plaintiff appeared and the trial court entered a form order dismissing plaintiff's complaint with prejudice, and subsequently denied his motion for reconsideration. This appeal followed.

¶ 4 Plaintiff here contends that the trial court abused its discretion in denying his purported motion for a continuance where the evidence supporting his claim was available and readily procurable. He also contends that the trial court erred in granting defendant's motion to dismiss because the court construed the record in favor of defendant, the moving party.

¶ 5 We initially note that only the common law record has been filed on appeal. In addition, there is nothing in that record indicating that plaintiff ever made a motion for a continuance, or that the court denied it; nor is there a copy of the motion to dismiss. Although the statements of facts for both parties refer to these motions, the arguments presented, and the subsequent rulings of the trial court, there is no meaningful citation to the record or indication of what the trial court heard concerning their respective contentions. *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993).

¶ 6 It is the responsibility of the plaintiff, as appellant, to provide an adequately complete record of the proceedings that is sufficient for reviewing the issues raised on appeal. *Foutch v.*

O'Bryant, 99 Ill. 2d 389, 391-92 (1984). In the absence of such a record, it is presumed that the trial court's judgment conformed with the law and had a sufficient factual basis. *Id.* at 392.

Plaintiff's *pro se* status does not excuse him from complying with the appellate court rules governing appellate proceedings (*Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010)), and there is a minimum standard that all litigants must meet before we can adequately review the lower court's decision (*Boalby*, 242 Ill. App. 3d at 462).

¶ 7 The chronology of filings in the common law record suggests that defendant filed a motion to dismiss plaintiff's action for failure to state a claim for which relief could be granted pursuant to section 2-615 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-615 (West 2014). In such a case, the absence of a transcript or acceptable substitute (S. Ct. R. 323(a) (eff. Dec. 13, 2005)), would not preclude appellate review because the court's ruling could have been based on only the pleadings and affidavits contained in the record. *Walker v. Iowa Marine Repair Corp.*, 132 Ill. App. 3d 621, 625-26 (1985). Here, however, even the pleadings are missing from the record making it impossible for us to review plaintiff's claims. *Boalbey*, 242 Ill. App. 3d at 462.

¶ 8 We thus have no basis for holding that the trial court abused its discretion on either of the challenged motions (*Foutch*, 99 Ill. 2d at 392), and make the presumption that the trial court heard ample grounds to support its determination (*Boalbey*, 242 Ill. App. 3d at 462).

¶ 9 We note that plaintiff has raised several arguments in his reply brief that he did not raise in his initial brief. Since is improper for plaintiff to raise new arguments in a reply brief (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)); *Ryan v. Glen Ellyn Raintree Condominium Ass'n*, 2014 IL App (2d) 130682 ¶ 20), they will not be considered.

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¶ 10 For the forgoing reasons, we affirm the order of the circuit court of Cook County.

¶ 11 Affirmed.