FIRST DIVISION
SEPTEMBER 14, 2015

No. 1-14-2156

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, as subrogee of Pauline Munoz, Plaintiff-Appellee, v. ANGEL RIOS and EUARISTO RIOS, Defendants, and DIRECT AUTO INSURANCE, as third-party garnishee, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 12 M1 10028 Honorable Daniel J. Kubasiak, Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Delort and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Garnishee in a garnishment action provided an incomplete record on appeal to support its claim of trial error and, thus, there is no basis upon which to overturn the trial court's judgment at trial.

¶ 2 Following a bench trial, the circuit court of Cook County found in favor of plaintiff State Farm Mutual Automobile Insurance Company (State Farm) and against defendant Direct Auto Insurance (Direct Auto), in a garnishment action involving an insurance policy issued by Direct Auto to its insured, Euaristo Rios (Euaristo). On appeal, Direct Auto argues that the trial court's finding that "coverage is afforded" under the insurance policy was against the manifest weight of the evidence. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 On March 28, 2011, Pauline Munoz (Pauline), as an insured of State Farm, was involved in an automobile accident with Angel Rios (Angel). At the time of the accident, Angel was driving a vehicle that was owned by Euaristo and insured by Direct Auto. On January 5, 2012, State Farm, as subrogee and insurer of Pauline, filed a negligence action against Angel and Euaristo requesting relief in the amount of $12,821.05, plus costs. On June 8, 2012, the cause was assigned to mandatory arbitration.

¶ 5 On October 26, 2012, a mandatory arbitration hearing was held at which neither Angel nor Euaristo personally appeared.[1] The appointed arbitrators entered an award in favor of State Farm and against Angel and Euaristo in the amount of $12,821.05. On November 13, 2012, State Farm filed a motion to bar Angel and Euaristo from rejecting the arbitration award, alleging that they did not present their case for any adversarial testing by failing to appear at the mandatory arbitration hearing. On December 13, 2012, counsel for Angel and Euaristo filed a "rejection of arbitration award." On February 14, 2013, the trial court barred Angel and Euaristo

[1] Angel and Euaristo were represented by counsel hired by Euaristo's insurer, Direct Auto. Angel and Euaristo did not appear in person at the arbitration hearing despite being served pursuant to Supreme Court Rule 237 (eff. July 1, 2005).

from rejecting the October 26, 2012 arbitration award and entered judgment on the award in the amount of $12,821.05.

¶ 6 On April 5, 2013, State Farm, as judgment creditor, filed a garnishment action[2] against Direct Auto, as garnishee "indebted to the judgment debtor[s], Angel [and Euaristo]," for the amount of $12,821.05. On May 9, 2013, the trial court entered an order stating that a conditional judgment be entered against Direct Auto "in favor of [d]efendant Angel Rios, for use of [p]laintiff State Farm, in the sum of $12,821.05." On June 27, 2013, the trial court entered a final order confirming the May 9, 2013 conditional judgment of $12,821.05 against Direct Auto and in favor of State Farm. However, on July 17, 2013, the trial court, upon Direct Auto's motion, vacated the May 9, 2013 conditional judgment against Direct Auto. Thereafter, the parties engaged in discovery and on March 19, 2014, the matter was set for trial. On May 28, 2014, in preparation for trial, Direct Auto filed with the court a "trial book" containing documents which Direct Auto claimed "may be introduced into evidence" at trial, as well as a list of potential witnesses that Direct Auto may call at trial.

¶ 7 On June 16, 2014, a bench trial commenced. Following trial, the trial court ruled in favor of State Farm and against Direct Auto, holding that "coverage is afforded under the Direct Auto policy."[3] On July 11, 2014, Direct Auto filed a timely notice of appeal. Accordingly, we have jurisdiction over this appeal.

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[2] Included in the record on appeal before us are an "affidavit for garnishment (non-wage)" and a "garnishment summons (non-wage)" filed by State Farm against Direct Auto. For unclear reasons, State Farm only listed Angel as the judgment debtor, despite the court's entry of the February 14, 2013 judgment on the arbitration award for $12,821.05 against both Angel and Euaristo.

[3] Although unclear, the record seems to suggest that Direct Auto had separately filed a declaratory judgment action against Angel, Euaristo, and Pauline in 2014 (case No. 14 CH 2576), which appears to have been consolidated with the instant garnishment action.

¶ 8 ANALYSIS

¶ 9 The sole issue on appeal is whether the trial court erred in ruling in favor of State Farm and against Direct Auto in the garnishment action at trial, which we review under a manifest weight of the evidence standard. See *Bank of America v. WS Management, Inc.*, 2015 IL App (1st) 132551, ¶ 84 (the standard of review of a trial court's judgment after a bench trial is whether that judgment is against the manifest weight of the evidence). A finding is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.* In a bench trial, it is the function of the trial judge to weigh the evidence and making findings of fact and we may not substitute our judgment for that of the trier of fact. *Id.* Further, we will not disturb a trial court's judgment as long as there is evidence to support it. *Id.* We may affirm the judgment of the trial court on any basis in the record, regardless of whether the trial court relied upon that basis or whether the trial court's reasoning was correct. *Id.*

¶ 10 On appeal, Direct Auto makes several arguments urging this court to reverse the trial court's judgment, by pointing to the "trial book" which it had filed prior to trial as "the only evidence in the [r]ecord." Specifically, Direct Auto argues that the trial court's ruling that the insurance policy afforded coverage was against the manifest weight of the evidence, because documents in the "trial book" showed that Angel and Euaristo failed to appear at the mandatory arbitration hearing despite receiving notice of the hearing by mail and by an in-person visit by Direct Auto's investigator; that Direct Auto acted reasonably in seeking their cooperation; that Angel and Euaristo willfully failed to appear at the mandatory arbitration hearing; that their absence from the arbitration hearing prevented Direct Auto from conducting direct examination of Angel on the facts of the automobile accident; that their absence was a material factor which

prevented Direct Auto from rejecting the arbitration award and, thus, precluded a jury trial on the underlying negligence action; and that Angel and Euaristo's failure to cooperate in the legal process was a breach of the insurance contract.

¶ 11 State Farm counters, in an abbreviated brief, that the record on appeal before us is devoid of a transcript of the trial proceedings or a bystander's report of the proceedings, and fails to contain any evidence that the documents in the "trial book" were admitted into evidence. Thus, State Farm asserts, this court is provided no basis upon which to overturn the ruling of the trial court. We agree.

¶ 12 Illinois Supreme Court Rule 321 requires the inclusion of any report of proceedings in the record on appeal. Ill. S. Ct. R. 321 (eff. Feb. 1, 1994). Under Supreme Court Rule 323(a), the report of proceedings "shall include all the evidence pertinent to the issues on appeal." Ill. S. Ct. R. 323 (eff. Feb. 1, 1994). "If no verbatim transcript of the evidence of proceedings is obtainable," the appellant may prepare a proposed bystander's report of proceedings to be certified by the trial court. Ill. S. Ct. R. 323(c) (eff. Feb. 1, 1994). "An appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim 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. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 13 Here, the record on appeal before us neither contains a report of the trial proceedings nor a bystander's report in lieu thereof. As such, we find no basis for holding that the trial court's judgment in favor of State Farm was against the manifest weight of the evidence. Notwithstanding the incomplete record, Direct Auto points to the "trial book" as the only

evidence of record. However, Direct Auto cites to no authority establishing that a "trial book," which was filed weeks *prior* to trial, may be substituted as the record on appeal, the report of the trial proceedings, or the bystander's report. Indeed, the introduction page of Direct Auto's "trial book" expressly represents that the documents and information contained therein "*may* be introduced as evidence" at trial and that Direct Auto "may call" as witnesses at trial the individuals listed in the "trial book." Absent a transcript of the trial proceedings or a bystander's report, we decline to speculate what documents from the "trial book" were actually presented at trial, what documents were then actually admitted as exhibits into evidence, or which individuals were called to testify as witnesses at trial and what their testimony entailed. In fact, there is no indication as to whether any, some, or all of the contents of the "trial book" were admitted into evidence. We find that, even if the "trial book" had been admitted in its entirety, there remains no basis on which to conclude that the trial court's judgment was against the manifest weight of the evidence, where Direct Auto, as the appellant, failed to provide this court with the transcript of the trial proceedings or a bystander's report denoting the trial court's reasoning behind its ruling.[4] No other evidence is provided in the record on appeal to support Direct Auto's claim of error. Thus, we must presume that the trial court acted in conformity with the law and had a sufficient factual basis for ruling in favor of State Farm. Any doubts which may arise from the insufficiency of the record must be resolved against Direct Auto as the appellant. Therefore, we cannot conclude that an opposite conclusion is apparent from the insufficient record or that the

[4] Indeed, on September 24, 2014, Direct Auto filed a motion to extend time to file its brief before this court, noting that Direct Auto was "awaiting the [c]ourt reporter[']s transcript of the trial." On September 30, 2014, this court granted Direct Auto's motion. Thereafter, however, Direct Auto failed to include any trial transcripts in the record on appeal.

trial court's findings were unreasonable, arbitrary, or not based on the evidence. Accordingly, we hold that the trial court's judgment was not against the manifest weight of the evidence.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed.