

No. 1-15-0930

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 DISTRICT

| | | |
|------------------------|---|-------------------------------|
| MICHAEL SMITH, |) | Appeal from the Circuit Court |
| |) | of Cook County. |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 14 M1 012368 |
| |) | |
| MAC'S BAIT SHOP, INC., |) | |
| |) | Honorable John Allegretti, |
| Defendant-Appellant. |) | Judge Presiding |

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment awarding plaintiff damages as reimbursement for the veterinary bills incurred after plaintiff's dog was attacked by defendant's dog was not against the manifest weight of the evidence.

¶ 2 Defendant Mac's Bait Shop, Inc. appeals the trial court's judgment awarding plaintiff Michael Smith damages as reimbursement for the veterinary bills incurred by plaintiff after plaintiff's dog was attacked by defendant's dog.

¶ 3 Plaintiff filed a small claims complaint which alleged that, on or about April 30, 2013, defendant's dog that was kept at defendant's place of business, located at 2322 East 75th Street,

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Chicago, escaped from the business' premises and attacked plaintiff's dog as she was being walked on 75th Street. Defendant's dog bit plaintiff's dog several times and caused plaintiff's dog to undergo an emergency surgery. Plaintiff incurred numerous veterinarian bills that were submitted with the amended complaint.

¶ 4 On appeal defendant argues that: 1) the trial court's judgment was against the manifest weight of the evidence; 2) plaintiff's case was barred by *res judicata*; 3) the trial court erred in granting plaintiff's untimely motion to vacate the judgment of dismissal for want of prosecution, and 4) the trial court did not have jurisdiction over the case.

¶ 5 Initially, we note that defendant included in the caption of his brief, along with the instant case circuit court number, another circuit court case number 13 M1 013555. However, as reflected by the common law record, notice of appeal was filed solely in the case number 14 M1 012368. Accordingly, we do not have jurisdiction over the circuit case number 13 M1 013555. See Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015) (to confer jurisdiction on the reviewing court a notice of appeal must be filed within 30-days of the trial court's final judgment or disposal of the last pending postjudgment motion directed against that order).

¶ 6 Defendant claims that the trial court's judgment was against the manifest weight of the evidence presented at trial. Specifically, defendant contends that the trial court erred in granting the judgment in favor of the plaintiff because plaintiff failed to establish the ownership of the dog and, also, because plaintiff did not establish an agency relationship between plaintiff and the dog walker. In addition, defendant claims that the trial court awarded an excessive verdict of "more than 10 times the value *** [plaintiff] allegedly paid for the dog."

¶ 7 In order to support a claim of error on appeal, the appellant has the burden to present a sufficiently complete record. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, (1984). In fact, "[f]rom

the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant.” *Foutch*, 99 Ill. 2d at 391. Where the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding. Instead, absent a record, “it [is] presumed that the order entered by the trial court [is] in conformity with the law and had a sufficient factual basis.” *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001).

¶ 8 In the instant case, the record contains no transcripts of the trial that took place on February 26, 2015, no report of proceedings, and no bystander's report. The trial court's order, dated February 26, 2015, indicates that plaintiff, plaintiff's counsel and defendant's counsel were present and that the court, being fully advised, granted judgment for the plaintiff in the sum of \$3,961.22 plus costs. Under these circumstances, we will presume that the trial court heard adequate evidence to support its decision and that its order granting the judgment in favor of the plaintiff for \$3,961.22 in damages plus costs was in conformity with the law. See *Foutch*, 99 Ill. 2d at 391-92. Therefore, defendant has failed to establish that the trial court's judgment was against the manifest weight of the evidence.

¶ 9 Next, defendant contends that plaintiff's case is barred by *res judicata* because, according to defendant, the trial court already dismissed the case *Shegog v. Mac's Bait Shop*, No. 13 M1 013554, involving the same parties and the same alleged incident. However, three requirements must be met for *res judicata* to apply. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 470 (2008). There must be: (1) a final judgment on the merits rendered by a court of competent jurisdiction, (2) identity of cause of action, and (3) identity of parties for both actions. *Id.* *Res judicata* does not apply here because the instant case and *Shegog v. Mac's Bait Shop*, No. 13 M1 013554 involve different plaintiffs. In addition, the common law record does not indicate whether a final

judgment on the merits was rendered in the case *Shegog v. Mac's Bait Shop*, No. 13 M1 013554.

Accordingly, defendant's argument that plaintiff's case was barred by *res judicata* fails.

¶ 10 Further, defendant argues that the trial court erred in granting plaintiff's untimely motion to vacate the judgment of dismissal for want of prosecution, 72 days after the judgment of dismissal for want of prosecution was entered. However, defendant's claim is not supported by the common law record. The common law record indicates that on August 18, 2014, the case was dismissed without prejudice for want of prosecution and that on August 28, 2014, the trial court granted plaintiff's motion to vacate the dismissal. In addition, in its order dated December 18, 2014, the trial court specifically noted that the judgment of dismissal for want of prosecution had already been vacated on August 28, 2014. Therefore, defendant failed to establish that the trial court erred in granting plaintiff's motion to vacate the judgment of dismissal for want of prosecution when plaintiff's motion was filed and granted within 30 days of the entry of judgment of dismissal. See *N. Illinois Gas Co. v. Midwest Mole, Inc.*, 199 Ill. App. 3d 109, 114 (1990).

¶ 11 Finally, defendant contends that the trial court did not have jurisdiction over the instant case because service of process was improper when defendant's name was misspelled in the Sheriff's affidavit attesting the service of process. A party may object to the court's jurisdiction for improper or insufficient service of process "prior to the filing of any other pleading or motion." 735 ILCS 5/2-301(a) (West 2012); *Cardenas Mktg. Network, Inc. v. Pabon*, 2012 IL App (1st) 111645, ¶ 21. Here, the common law record does not reflect whether defendant objected to the trial court's jurisdiction based on improper service of process prior to the filing of his Motion to Dismiss stamped filed on May 15, 2014. Moreover, the common law record does not indicate that defendant objected to the court's jurisdiction at any time. Therefore, defendant's

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claim that the trial court did not have jurisdiction over the instant case due to improper service of process fails.

¶ 12 In sum, we affirm the trial court's judgment awarding plaintiff the sum of \$3,961.22 plus costs in damages.

¶ 13 Affirmed.