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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ROCK RIVER WATER RECLAMATION DISTRICT,)	Appeal from the Circuit Court of Winnebago County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 12-ED-2
)	
THE SANCTUARY CONDOMINIUMS OF ROCK CUT,)	Honorable
)	Edward J. Prochaska,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court order granting defendant's motion for stay pending appeal pursuant to Illinois Supreme Court Rule 305(b) (eff. July 1, 2004) would be affirmed. Plaintiff failed to present a sufficiently complete record to support its claim of error, and, in any event, based on limited record presented, the grant of the stay by the trial court did not constitute an abuse of discretion.

¶ 2 Plaintiff, Rock River Water Reclamation District, appeals from an order of the circuit court of Winnebago County, granting the motion of defendant, The Sanctuary Condominiums of Rock Cut, for a stay of judgment pursuant to Illinois Supreme Court Rule 305(b) (eff. July 1, 2004). For the reasons set forth below, we affirm.

¶ 3 Plaintiff is an Illinois unit of local government organized under the Sanitary District Act of 1917 (Sanitary Act) (70 ILCS 2405/0.1 *et seq.*, (West 2010)). Section 7 of the Sanitary Act (70 ILCS 2405/7 (West 2010)) authorizes plaintiff to construct and maintain pipes for carrying off and disposing of sewage. In addition, section 19 of the Sanitary Act (70 ILCS 2405/19 (West 2010)) authorizes plaintiff to undertake capital improvement projects paid for by special assessment. On October 25, 2010, plaintiff adopted an ordinance providing for the construction of sanitary sewers in the Oak Crest subdivision to be paid for by a special assessment. Rock River Water Reclamation District Ordinance No. 10/11-S-02 (adopted October 25, 2010). The proposed sewer line would run across defendant's property, thereby requiring plaintiff to obtain a permanent easement and a temporary construction easement. In April 2011, plaintiff filed a complaint for condemnation. On defendant's motion, the trial court dismissed plaintiff's complaint, finding that the ordinance promulgated by plaintiff for the construction of the sanitary sewer line failed to state that the taking was necessary and failed to describe with reasonable certainty the property sought to be taken. See 70 ILCS 2405/22a.6 (West 2010) (providing that if a proposed improvement requires the taking of property, the ordinance authorizing the improvement shall so state); *City of Kankakee v. Dunn*, 337 Ill. 391, 395 (1929) (holding that whenever a proposed improvement will require that private property be taken, the ordinance shall describe the property to be taken with reasonable certainty).

¶ 4 Thereafter, plaintiff enacted a separate ordinance providing that "an easement for construction of said sewer is required across and through [defendant's] property" and incorporating a description of the property by reference. Rock River Water Reclamation District Ordinance No. 11/12-M-08 (approved November 28, 2011). In December 2011, plaintiff offered defendant \$2,700 for the easements, double the value of the easements as set forth in a May 2011

appraisal obtained by plaintiff. Defendant rejected plaintiff's offer. In January 2012, plaintiff initiated a new condemnation action. Defendant moved to dismiss on the grounds of *res judicata* and improper notice. The trial court denied defendant's motion. Defendant then moved for an interlocutory appeal pursuant to Illinois Supreme Court Rule 308(a) (eff. February 26, 2010) seeking to certify two questions of law related to its *res judicata* and improper notice arguments. The trial court granted defendant's request for certification, but this court denied defendant's request for leave to appeal. See *Rock River Water Reclamation District v. The Sanctuary Condominiums of Rock Cut*, 2013 IL App (2d) 130396-U.

¶ 5 Defendant then filed a traverse and motion to dismiss. On June 17, 2013, following a bench trial, the trial court denied the relief defendant requested. The court found the taking was necessary, not excessive, and for a public purpose. In addition, the court concluded that the parties negotiated in good faith prior to suit. On August 1, 2013, following a hearing, the trial court determined that \$1,350 was just compensation for the easements (consisting of \$1,200 for the permanent easement and \$150 for the temporary construction easement).

¶ 6 On August 8, 2013, the trial court entered a written order granting plaintiff the easements it requested. In the order, the trial court authorized plaintiff to take "immediate possession" of the property in question. The order further provided that if defendant files a notice of appeal, "such immediate possession shall be subject to the Plaintiff posting a bond pursuant to 735 ILCS 30/10-5-80." On the same day that the order was entered, defendant filed a notice of appeal and a motion for stay pursuant to Illinois Supreme Court Rule 305(b) (eff. July 1, 2004).¹ Plaintiff then posted bond in the amount of \$1,350, which the trial court approved on September 16, 2013.

¹ The direct appeal is the subject of Case No. 2-13-0813, now pending separately before this court.

Also on September 16, 2013, the trial court heard arguments on defendant's motion for a stay and granted it. The court's stay ruling was reduced to writing on September 17, 2013. On October 16, 2013, plaintiff filed a notice of appeal from the order granting defendant's motion for stay.²

¶ 7 On appeal, plaintiff argues that the trial court erred in granting defendant's motion for stay pursuant to Illinois Supreme Court Rule 305(b). According to plaintiff, at the hearing on September 16, 2013, the trial court heard arguments and found defendant's *res judicata* and

² The parties assert that we have jurisdiction to consider this appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. February 26, 2010). Rule 307(a)(1) provides that “[a]n appeal may be taken to the Appellate Court from an *interlocutory* order of court *** granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction.” (Emphasis added.) In the present case, however, defendant filed a motion for stay *after* the trial court entered a *final* judgment. See *Pekin Insurance Co. v. Benson*, 306 Ill. App. 3d 367, 375 (1999) (defining a “final judgment” as “one that fixes absolutely and finally the rights of the parties in the lawsuit on all issues of litigation and disposes of the entire controversy.”). Thus, we are not dealing with an *interlocutory* appeal, and jurisdiction under Rule 307(a)(1) is not appropriate. See *Gardner v. Mullins*, 234 Ill. 2d 503, 509-10 (2009). While we could dismiss the appeal for failure to cite the appropriate rule, we opt not to take such a drastic measure, and instead exercise jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. February 1, 1994) (providing that every final judgment of the circuit court is appealable as of right) and Illinois Supreme Court Rule 303 (eff. June 4, 2008) (providing method for perfecting appeal). See *Gardner*, 234 Ill. 2d at 510 (holding that citation to improper rule will not divest appellate court of jurisdiction where the court otherwise had jurisdiction).

improper notice arguments “ ‘significant’ issues that the appellate court should address.” Plaintiff further asserts that the trial court found that defendant would suffer irreparable harm if construction began because trees, grass, and bushes would be removed and wildlife would be displaced. Plaintiff insists that neither of these findings is correct and that the trial court therefore abused its discretion in entering the stay.

¶ 8 Rule 305(b) provides as follows:

“(b) Stays of Enforcements of Nonmoney Judgments and Other Appealable Orders. Except in cases provided for in paragraph (e) of this rule, on notice and motion, and an opportunity for opposing parties to be heard, the court may also stay the enforcement of any judgment, other than a judgment, or portion of a judgment, for money, or the enforcement, force and effect of appealable interlocutory orders or any other appealable judicial or administrative order. The stay shall be conditioned upon such terms as are just. A bond or other form of security may be required in any case, and shall be required to protect an appellee’s interest in property.” Illinois Supreme Court Rule 305(b) (eff. July 1, 2004).

In making a determination on a stay pursuant to Rule 305(b), there is no specific set of factors that a court must consider. *Stacke v. Bates*, 138 Ill. 2d 295, 304-05 (1990). Nevertheless, the supreme court has stated that to prevail on a motion for stay, the movant must “present a substantial case on the merits and show that the balance of the equitable factors weighs in favor of granting the stay.” *Stacke*, 138 Ill. 2d at 309. The equitable factors to consider include “whether a stay is necessary to secure the fruits of the appeal in the event the movant is successful” and whether hardship on other parties would be imposed. *Stacke*, 138 Ill. 2d at 305-09. “If the balance of the equitable factors does not strongly favor movant, then there must be a

more substantial showing of a likelihood of success on the merits.” *Stacke*, 138 Ill. 2d at 309. The decision to grant a stay is a discretionary act which will be reversed on appeal only if the evidence establishes an abuse of discretion. *Stacke*, 138 Ill. 2d at 302; *Fick v. Weedon*, 244 Ill. App. 3d 413, 418 (1993). An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 21.

¶ 9 Initially, we note that plaintiff, as the appellant, has the burden of providing a sufficiently complete record of the proceedings at trial to support its claims of error. *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). 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 the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. Any doubts which arise from the incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. Plaintiff has failed to meet this burden. In this regard, we note that the September 17, 2013, written order granting the stay was included in the record but does not set forth the court’s reasoning. According to plaintiff, the trial court set forth its reasons for granting the stay at the hearing on September 16, 2013. However, plaintiff has not included a transcript of that hearing in the record on appeal. Without the transcript of proceedings, we cannot properly evaluate plaintiff’s claim that the trial court abused its discretion in granting the stay. See *Foutch*, 99 Ill. 2d at 392 (holding that in the absence of a transcript of the hearing on a motion to vacate, there was no basis for concluding the trial court abused its discretion in denying the motion).³

³ This court granted plaintiff’s motion to adopt the record on appeal in case No. 2-13-0813 as the record in this case. In its brief in the present appeal, plaintiff requests that we take “judicial notice of the documents filed in Appeal No. 2-13-0813, including the affidavit of Dana Carroll, [plaintiff’s] Engineering Manager, which [plaintiff] filed as an exhibit in support of its

motion to vacate the stay in No. 2-13-0813.” However, we denied plaintiff’s motion to vacate the stay, finding that plaintiff did not have standing to request relief from this court because it did not file an appeal. Moreover, adopting plaintiff’s request would allow plaintiff to circumvent the rules of our supreme court relating to the contents of the record on appeal. See Illinois Supreme Court Rule 321 (eff. February 1, 1994) (providing that the record on appeal shall consist of “the judgment appealed from, the notice of appeal, *** the entire common law record[,]” and the report of proceedings); Illinois Supreme Court Rule 323 (eff. December 13, 2005) (describing contents of report of proceedings); Illinois Supreme Court Rule 329 (eff. January 1, 2006) (providing procedure for supplementing record on appeal); see also *Wieser v. Missouri Pacific R.R. Co.*, 98 Ill. 2d 359, 264 (1983) (rejecting belated attempt by litigant to bolster deficient record). We further note that defendant has filed a motion under Illinois Supreme Court Rule 375(a) (eff. February 1, 1994) to strike portions of plaintiff’s brief and appendix. Defendant notes that plaintiff included a copy of Carroll’s affidavit in the appendix to its brief in the present cause and referenced the contents of the affidavit in its statement of facts and argument. We grant the motion to strike the affidavit as it was executed after the trial court entered the stay and was therefore never entered into the record on appeal. See *Sylvester v. Chicago Park District*, 179 Ill. 2d 500, 507 (1997) (noting that evidence not presented at trial cannot be introduced for the first time on appeal); Illinois Supreme Court Rule 342 (eff. January 1, 2005) (noting that any pleadings or other materials included in the appendix shall be “from the record”). Similarly, we grant defendant’s request to disregard any references to the contents of the affidavit in the statement of facts and argument sections of plaintiff’s brief because the affidavit is not part of the record on appeal. See Illinois Supreme Court Rule 341(h)(6) (eff. February 6, 2013) (requiring statement of facts to reference “the pages of the record on appeal”); Illinois Supreme Court Rule

¶ 10 Even without a transcript of the hearing itself, the limited record before us supports a determination that the trial court did not abuse its discretion in granting the motion to stay. As noted above, to prevail on a motion for stay, the movant must present a substantial case on the merits and show that the balance of the equitable factors weighs in favor of granting the stay. *Stacke*, 138 Ill. 2d at 309. Thus, we initially address whether defendant presented a “substantial claim on the merits.” Based on the request for certification, and as represented in the briefs before us, one of the issues on direct appeal will be whether plaintiff was required to comply with the “notice-of-public-hearing-on-proposed-ordinances requirements of sections 22a.5 and 22a.6 of the Act [(70 ILCS 2405/22a.5, 22a.6 (West 2010))] regarding persons whose property will be subject to condemnation for a proposed local improvement, but whose property will not be assessed to pay for the improvement, before *** exercis[ing] its power of eminent domain to take that property.” See *Rock River Water Reclamation District*, 2013 IL App (2d) 130396-U, ¶ 2. Although plaintiff insists that defendant was not required to receive notice of the special assessment hearing, it does not appear that the statutory provisions allegedly implicated have ever been interpreted by a court of this state. See *Witmer v. Commonwealth*, 889 A.2d 638, 640-41 (Pa. Commw. Ct. 2005) (granting application for stay, noting in part that where state supreme court had not had an opportunity to address a specific issue, it cannot be “stated with certainty” that litigant will not prevail on the merits). As such, we conclude that the trial court could have reasonably concluded that defendant presented a “substantial claim on the merits.”

¶ 11 We also find that the trial court could have reasonably determined that the balance of the equitable factors favors granting the stay. The first factor concerns whether the stay is necessary

341(h)(7) (eff. February 6, 2013) (requiring the argument section of the appellant’s brief to cite to the “pages of the record relied on”).

to “secure the fruits of the appeal.” The plat of easement attached to plaintiff’s complaint indicates that the permanent easement will consist of a trapezoidal piece of land measuring 40 feet by 257.7 feet by 77.91 feet by 184.65 feet. If we reverse the stay, plaintiff will be able to enter defendant’s land and begin construction of the sewer line. It is undisputed that the construction will require the removal of trees, bushes and grass as well as the displacement of wildlife. Indeed, plaintiff concedes in its brief that defendant’s land is “unique,” and this factor therefore weighs in defendant’s favor. See *Forest Preserve District of Cook County v. Mount Greenwood Bank Land Trust 5-0899*, 219 Ill. App. 3d 524, 529 (1991) (noting, in ruling on an injunction, that “the destruction of flora, fauna, and scenic beauty would be irreparable, and indeed, final.”). Plaintiff nevertheless insists that the detriment to it weighs strongly in its favor. It asserts that the residents of the Oak Crest subdivision are waiting for sewer service and that contracts for the project have been executed. Even so, we cannot say that this evidence tips the balance of the equitable factors in plaintiff’s favor. According to the record before us, the residents of the Oak Crest subdivision have been waiting for sewer service since 1999. In comparison, the minimal delay occasioned by the present appeal process is of little consequence. Further, plaintiff does not explain how it is harmed by the fact that the contracts for the project have been executed. Thus, given the unique nature of the asset at issue, the first equitable factor strongly favors granting the stay. Conversely, the second factor does not strongly favor lifting the stay given the minimal harm identified by plaintiff.

¶ 12 In short, we find that plaintiff failed to present a sufficiently complete record to support its claim of error. However, even based on the limited record before us, we cannot say that no reasonable person would have taken the view adopted by the trial court. Accordingly, we affirm

the judgment of the circuit court of Winnebago County granting plaintiff's motion for stay pursuant to Rule 305(b).

¶ 13 Affirmed.