2016 IL App (2d) 151172-U
No. 2-15-1172
Order filed August 29, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LISSETT E. BATLLE, as Special Administrator and Special Representative of the Estate of Dayana Garcia, deceased,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellant,	)	
v.	)	No. 13-LA-320
UNIVERSAL SECURITY INSTRUMENTS, INC.; USI ELECTRIC, INC.; HOME DEPOT U.S.A., INC.; WALTER KIDDE PORTABLE EQUIPMENT, INC.; and UNITED TECHNOLOGIES CORPORATION,	)	
Defendants-Appellees	)	Honorable Thomas E. Meyer, Judge, Presiding.
(Sun-Wave Electrical PTY, Ltd., Defendant.)	)	

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Notice of appeal was sufficient to confer jurisdiction on the reviewing court to review both the imposition of sanctions and the grant of summary judgment, but appellant failed to submit a sufficient record to permit meaningful review.

¶ 2 The plaintiff, Lissett Batlle, filed survival and wrongful death claims on behalf of her daughter Dayana Garcia, who died in a fire in their home. Asserting that the smoke detectors

installed in her home were defectively designed and contained inadequate warnings, she sued the following defendants on the basis that they designed, manufactured, distributed, or sold the smoke detectors: Universal Security Instruments, Inc. and its subsidiary, USI Electric, Inc. (collectively, USI); Walter Kidde Portable Equipment, Inc. and its affiliate, United Technologies Corporation (collectively, WKPE); and Home Depot.[1] Finding that the plaintiff had committed spoliation by failing to preserve the fire scene, the trial court entered sanctions against the plaintiff pursuant to Illinois Supreme Court Rule 219(c) (Ill. S. Ct. R. 219(c) (eff. July 1, 2002)), that prevented her from tendering evidence regarding the smoke detectors. The trial court then granted summary judgment in favor of the defendants. The plaintiff appeals the imposition of sanctions and the grant of summary judgment. Lacking the record necessary to permit meaningful review, we summarily affirm.

¶ 3 I. BACKGROUND

¶ 4 The following recitation is drawn largely from the allegations of the complaint, as well as from various documents produced to the court as exhibits to motions or briefs.

¶ 5 In 2009, Batlle and Joel Paiz purchased a home at 4510 Parkway Avenue in the city of McHenry. The home was a two-story wood frame house with aluminum siding.

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[1] Although the plaintiff also sued the alleged manufacturer of the space heater presumed to have caused the fire, Sun-Wave Electrical PTY, Ltd., that party never filed an appearance. As used herein, "the defendants" refers only to USI, WKPE, and Home Depot. As a further clarification, although United Technologies Corporation participated jointly with WKPE in much of the proceedings in the trial court, it was dismissed from the case on October 20, 2015, and that dismissal has not been appealed. Accordingly, although named as an appellee by the plaintiff, the claims against it are not before us.

¶ 6 Between May 2009 and July 2011, the McHenry County Fire Protection District (District) bought smoke detectors from Home Depot to distribute to certain residents of the county at no charge. It appears that most of the smoke detectors the District purchased were ionization smoke detectors that were designed and manufactured by USI, although receipts produced in discovery showed that the District also purchased a few smoke detectors manufactured by WKPE. Batlle obtained two of these detectors in the summer or fall of 2011. She brought them home and they were installed by her boyfriend, Rene Rodriguez, who followed the directions provided with the detectors, putting in fresh batteries. One alarm was installed on the ceiling of the first floor near the entrance to the kitchen, and the other was installed on the second floor, on the hallway ceiling at the top of the stairs. The defendants contest whether such smoke detectors were in fact installed in the home.

¶ 7 In 2012, the Bank of New York (Bank) initiated foreclosure proceedings on the home. A judgment of foreclosure was entered and the home was sold at judicial sale in December 2012. The Bank was the successful bidder at the judicial sale. Despite the foreclosure, on March 7, 2013, Batlle, her four children, and Rodriguez were still residing in the home.

¶ 8 On the evening of March 7, 2013, a fire broke out after the residents had retired to bed. Batlle's son Gerson awoke to a popping sound and discovered that he could not leave his room through the door because it was too hot to touch and there was too much smoke. He climbed out the window onto a first floor roof and woke Batlle and Rodriguez. The McHenry fire department arrived at about 1:21 a.m. When the firefighters arrived, they were unable to enter the home because of the intensity of the fire. They instead focused on extinguishing the blaze from outside. Rodriguez had been able to evacuate all of the children except Dayana, whom he could not locate due to the heavy smoke and intense fire.

¶ 9 When the fire was out, fire department investigators and the state Fire Marshal entered the remains of the home and conducted an investigation focused on locating Dayana and determining, to the extent possible, the origin of the fire. They found Dayana in her upstairs bedroom, dead, with burns over much of her body. The coroner later determined that she had died of smoke inhalation. The fire department report concluded that she "was unable to escape due to the lack of early notification."

¶ 10 The reports of the fire investigators and Fire Marshal stated the following. There was no sign that the fire had started on the outside of the home. The electrical service and gas service were intact at the time of the fire (both were shut off after the fire). A canine search indicated no sign of "ignitable liquids." The fire damage was heaviest in the middle of the first floor, near the entry to the kitchen. The roof of the second floor had been consumed by fire and had collapsed into the middle of the first floor due to fire damage and the effect of the water from the fire hoses. The north and south exterior walls of the home were partly burned down. The interior wall between the kitchen and the living room had been "completely consumed by fire," and the floor in that area had been substantially burned and was sagging. The staircase to the second floor and the easternmost bedrooms on the second floor could not be located due to fire damage. Many of the windows in the home had been blown out by the fire.

¶ 11 Fire investigators spoke with Gerson, who told them that no one in the family smoked, the stove had been turned off before they went to bed, and no candles had been in use. Because they were having trouble with heating unit for the first floor, they had been using two space heaters. One had been located near the front door, and the other had been near the kitchen.

¶ 12 The investigators examined the kitchen appliances, which showed heavy external fire damage but were ruled out as a source of the fire due to fire patterns and their location. The

space heater near the front door was also located. Although it had sustained fire damage, it was structurally intact. The structure of the other space heater could not be located, although some electrical components similar to those commonly found in space heaters were located near the kitchen and were preserved by the police department. The investigators and Fire Marshal determined that the fire had originated in the center of the first floor between the kitchen and the living room. The cause of the fire was listed as undetermined.

¶ 13 Within two days after the fire, the City of McHenry (City) entered the premises and knocked down the western wall, which had still been standing, as a safety measure to prevent it from falling onto the adjacent property. It does not appear that the City removed anything from the premises at that point.

¶ 14 Within 14 days after the fire, Batlle retained an attorney. That attorney hired two investigators and a fire origin expert, who visited the fire scene. Wayne Morris, one of the investigators hired by her attorney, investigated the fire scene no later than April 8, 2013, and took multiple photographs of the fire scene, as did Batlle. Morris and the fire origin expert both prepared reports regarding the fire, although the plaintiff later declined to produce the reports.

¶ 15 On April 29, 2013, the City wrote the Bank, advising the Bank that the City had cited it for allowing a dangerous structure to remain open and unsecured. The City's letter stated that the City had not removed any debris from the premises "due to the open death investigation," which had "since been closed." (This language apparently referred to the investigations conducted by the fire department, Fire Marshal, and coroner.) The City wanted the Bank to fence off the premises and remove the ruined structure. The letter advised the Bank that on May 9, 2013, it would appear in court and "seek an order to enter, demolish and remove all debris

from this site." Neither Batlle nor any of the former residents of the home were copied on the letter.

¶ 16 It appears that the City in fact obtained the court order it sought. On May 17, 2013, a demolition permit was obtained by a contractor. At some point during the next three months, the home was razed and all of the debris was removed. On August 18, 2013, a final inspection of the property was performed, at which point it was a vacant lot.

¶ 17 On November 12, 2013, Batlle, in her capacity as the representative of Dayana's estate, filed suit against USI and Home Depot. The initial complaint alleged wrongful death claims against each of the defendants as well as survival claims sounding in product liability on two theories: that the smoke detectors were defectively designed and that the defendants failed to warn of a known defect. The plaintiff's theory was that ionization smoke detectors such as the models in her home at the time of the fire were defectively designed in that they were known to function less effectively than photoelectric smoke detectors for smoldering fires (the type of fire most associated with fatalities), yet the manufacturers and sellers did not warn of this defect. The plaintiff later filed various amended complaints that added: negligence claims against USI and Home Depot; a wrongful death claim against WKPE (on the alternate theory that it designed and manufactured the smoke detectors); and wrongful death, negligence, and product liability claims against Sun-Wave Electrical PTY, Ltd., which was alleged to have designed and manufactured the space heater that caused the fire.

¶ 18 On December 5, 2013, shortly after being served with summons in the case, USI faxed the plaintiff a letter requesting access to the fire scene by its fire investigators, and asking that the fire scene and all of the smoke detectors that were in the home be preserved, "secured and unaltered." The plaintiff telephoned USI and stated that the smoke detectors had not been

preserved, and that the home had been demolished and all of the debris had been hauled away prior to the filing of the suit.

¶ 19 On September 2, 2015, USI moved for the imposition of sanctions pursuant to Illinois Supreme Court Rule 219(c) (Ill. S. Ct. R. 219(c) (eff. July 1, 2002)), claiming spoliation of evidence by the plaintiff. USI argued that the plaintiff's failure to preserve the fire scene and to inform the likely defendants of its pending demolition prevented them from performing their own investigation, thereby prejudicing them. It attached an affidavit from John Agosti, a certified fire investigator, describing the type of meticulous search possible to undertake at a fire scene, which could include the use of magnets to locate even tiny and burned fragments of metal components for smoke detectors and batteries. Agosti reviewed the reports of the McHenry County fire investigators and the Fire Marshal, and opined that those investigators did not conduct this type of thorough search before concluding that no smoke detectors could be found in the remains of the home. Agosti opined that the failure to preserve the fire scene prevented the defendants from determining: if there were properly mounted and functioning USI smoke detectors in the home at the time of the fire; the fire's point of origin; the cause of the fire; and the ignition sequence and early spread of the fire (which would be necessary to determine whether the fire had been fast flaming or a smoldering fire). USI also argued that it could no longer determine whether the plaintiff, her family members, or any other parties could be liable for causing the fire. USI asked the trial court to bar the plaintiff from presenting any evidence that USI smoke detectors were in the home at the time of the fire; that USI smoke detectors were dangerous or defective in any way; that USI smoke detectors caused Dayana's death; as to how the fire originated and spread; or as to the claimed inadequacy or defectiveness of the warnings

and instructions associated with USI smoke detectors. Home Depot and WKPE joined in this motion for sanctions.

¶ 20 In response, the plaintiff posited that the fire itself had destroyed the smoke detectors in the home, not any action or inaction on her part. Further, she argued that she did not own the home at the time of the fire, and the demolition of the ruined building and removal of debris occurred entirely at the direction of the City and the Bank, outside of her control or ability to prevent. To support this assertion, she attached court orders documenting the judicial sale of the home, and the correspondence between the City and the Bank. The plaintiff stated that "she was not represented on May 9, 2012 [*sic*]," but she attached no affidavit attesting to this statement or any of the other statements in her response brief. Finally, she argued that the official fire investigators had thoroughly documented the fire scene, producing over 500 pages of reports and photographs, and thus there was ample evidence regarding the scene. Although she stressed the trial court's discretion to fashion any appropriate sanction, the plaintiff requested simply that the motion be denied.

¶ 21 In reply, Home Depot noted that the plaintiff was apparently sufficiently "represented" that investigators employed by her attorney visited the fire scene within two weeks after the fire. Further, she apparently had sufficient control of the premises at that point that the investigators had no difficulty gaining access to the fire scene. Home Depot argued that the plaintiff put forward no evidence showing any effort to preserve the fire scene as important evidence in the forthcoming litigation that she evidently anticipated. Home Depot also pointed out that there was no evidence in the record (other than the unsupported allegations of the complaint) that there were in fact smoke detectors in the home at the time of the fire. USI filed a similar reply brief, citing cases in which a plaintiff without possession or control of destroyed evidence was

nevertheless sanctioned because the plaintiff knew that the evidence was important to a lawsuit and that it was going to be destroyed, yet failed to take action to preserve the evidence. Arguing that these cases supported the imposition of sanctions against the plaintiff, USI sought the dismissal of part or all of the lawsuit.

¶ 22 On October 20, 2015, the trial court heard oral argument on the pending motions. The record on appeal contains no transcript or other record of the proceedings. The trial court entered an order granting the motions of Home Depot and WKPE to join in the motion for sanctions. The order further directed that a written order be drafted and submitted on November 4, 2015, "containing the sanctions noted on record."

¶ 23 On November 4, 2015, the trial court entered two orders. The first order granted the motion for sanctions and barred the plaintiff from presenting any evidence: that smoke detectors designed, manufactured, distributed, or sold by the defendants were in the home at the time of the fire; that such smoke detectors were dangerous or defective in any way; that such smoke detectors caused Dayana's death; regarding the origin, cause, or spread of the fire; or that the warnings and instructions provided with such smoke detectors were inadequate or defective in any way. The second order stated that, "based upon the Court's rulings of October 20, 2015, and as detailed in [the contemporaneous] written order ***, the Court finds that no material questions of fact exist as to the moving Defendants' liability and that they are entitled to judgment as a matter of law." The trial court therefore entered summary judgment in favor of USI, WKPE, and Home Depot.

¶ 24 Both orders stated that the plaintiff's claims against Sun-Wave remained pending. Only the second order contained a finding pursuant to Illinois Supreme Court Rule 304(a) (Ill. S. Ct.

R. 304(a) (eff. Feb. 26, 2010)) that there was no just reason to delay enforcement or appeal of the order.

¶ 25 The plaintiff filed a timely notice of appeal that identified, as the order being appealed, "[t]he order of November 4, 2015[,] barring Plaintiff from presenting and introducing evidence regarding the smoke detectors." The notice of appeal also stated that, "[b]y this appeal, Plaintiff Appellant will ask the Court to reverse the order of November 4, 2015[,] barring Plaintiff from presenting and introducing evidence regarding the smoke detectors, and remand this cause with direction to reinstate all counts of the complaint for trial on merits as to all claims ***."

¶ 26 II. ANALYSIS

¶ 27 On appeal, the plaintiff argues that the trial court erred in imposing the sanctions that led to the entry of summary judgment in the defendants' favor. The defendants contend that this court lacks jurisdiction to consider the plaintiff's arguments because her notice of appeal was defective. The defendants further argue that her substantive arguments lack merit as well. We address the issue of our jurisdiction first.

¶ 28 A. Jurisdiction

¶ 29 The defendants argue that we lack jurisdiction over this appeal because the plaintiff's notice of appeal indicates that she is appealing only from the trial court's order granting the defendants' motion for sanctions. Because this was not a final order, they argue that we lack jurisdiction.

¶ 30 With exceptions not relevant here, this court has jurisdiction to consider appeals only from final orders. See Ill. S. Ct. R. 301 (eff. Feb. 1, 1994) ("Every final judgment of a circuit court in a civil case is appealable as of right."). A notice of appeal confers jurisdiction on a court

of review to consider only the judgments or part thereof specified in the notice of appeal. *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433 (1979).

¶ 31 However, a notice of appeal must be liberally construed. *Id.* As stated by our supreme court:

> "The notice of appeal serves the purpose of informing the prevailing party in the trial court that the unsuccessful litigant seeks a review by a higher court. Briefs, and not the notice of appeal itself, specify the precise points to be relied upon for reversal. Courts in this State and the Federal courts have repeatedly held that a notice of appeal will confer jurisdiction on an appellate court if the notice, when considered as a whole, fairly and adequately sets out the judgment complained of and the relief sought so that the successful party is advised of the nature of the appeal. [Citations.] Unless the appellee is prejudiced thereby, the absence of strict technical compliance with the form of the notice is not fatal, and where the deficiency in the notice is one of form only, and not of substance, the appellate court is not deprived of jurisdiction." *Id.* at 433-34.

¶ 32 In this case, the defendants are correct that the sanction order was not a final judgment and is therefore not independently appealable. *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 33. However, the notice of appeal not only asks this court to reverse the sanction order, but also to "remand this cause with direction to reinstate all counts of the complaint" for a trial on the merits as to all claims. Reading the notice of appeal liberally, as we must, the notice of appeal makes clear that the ultimate relief the plaintiff seeks is the reversal of summary judgment on her claims. The notice of appeal was sufficient to inform the defendants that she was seeking the reversal of the sanction order because that was the basis for the entry of summary judgment. Accordingly, we hold that the notice of appeal was sufficient to confer

jurisdiction on this court to review the propriety of the sanction order and the subsequent order granting summary judgment in favor of the defendants.

¶ 33 In so ruling, we note that the defendants also argue that we lack jurisdiction because the plaintiff continued to pursue her action against Sun-Wave after the entry of the summary judgment order. "If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. Sup. Ct. R. 304(a) (eff. Feb. 26, 2010). The summary judgment order in this case did not dismiss the claims against Sun-Wave and those claims remained pending.

¶ 34 The defendants note that while the summary judgment order contained Rule 304(a) language, the sanction order from which the plaintiff appeals did not. As such, they argue that we lack jurisdiction on that basis as well. However, as we have concluded that the notice of appeal was sufficient to appeal from both the sanction order and the summary judgment order, the Rule 304(a) language contained in the summary judgment order is sufficient to confer jurisdiction on this court despite the claims that remained pending against Sun-Wave. See Ill. S. Ct. R. 304(a). We therefore turn to the substance of the appeal.

¶ 35 B. Insufficiency of the Record

¶ 36 The plaintiff argues that the trial court erred in barring her from presenting any testimony relating to the smoke detectors and the cause of the fire, and then in granting summary judgment on that basis. However, she has failed to supply a record sufficient to permit meaningful review of the trial court's determination of the sanctions that were warranted.

¶ 37 As noted above, the plaintiff challenges the entry of summary judgment in favor of the defendants. We review a grant of summary judgment *de novo*. *Valfer v. Evanston Northwestern Healthcare*, 2016 IL 119220, ¶ 19. In this case, however, the correctness of the trial court's grant of summary judgment depends wholly on the correctness of its sanctions order: the plaintiff concedes that summary judgment was proper if the trial court's imposition of sanctions is affirmed. Hence, the only issue truly presented by the appeal is whether the trial court erred in imposing the sanctions it did.

¶ 38 "[A] potential litigant owes a duty to take reasonable measures to preserve the integrity of relevant and material evidence." *Shimanovsky v. General Motors,* 181 Ill. 2d 112, 121 (1998). This duty exists even before a lawsuit is filed, and a trial court may impose sanctions under Rule 219(c) for a breach of that duty that occurs prior to the commencement of the litigation. *Id*. at 123.

¶ 39 "The decision to impose a particular sanction under Rule 219(c) is within the discretion of the trial court and, thus, only a clear abuse of discretion justifies reversal." *Id*. at 112. An abuse of discretion occurs "where the record shows that the party's conduct was not unreasonable or where the sanction itself is not just." *Kubian v. Labinsky*, 178 Ill. App. 3d 191, 196 (1988). "In determining whether the circuit court abused its discretion in applying a sanction, this court must look to the same factors that the circuit court was required to consider in deciding an appropriate sanction." *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 621 (2007). These factors include: the surprise to the moving party, the prejudice caused by the missing evidence, the nature of the missing evidence, the diligence of the moving party, the timeliness of the motion for sanctions, and the good faith of the party against whom sanctions are sought. *Shimanovsky*, 181 Ill. 2d at 124. "No single factor is determinative, and each case presents a

unique factual situation which must be taken into consideration when determining whether a particular sanction is proper." *Nedzvekas*, 374 Ill. App. 3d at 621.

¶ 40 Under these precepts, our review of an order imposing sanctions must include a review of the record to see whether that record supports the sanctions imposed. Here, however, a meaningful review of the record is precluded by the fact that the plaintiff has not included any transcripts or other reports of the relevant proceeding: the October 20, 2015, oral argument on the motion for sanctions. The orders entered on that date and on November 4, 2015, do not include any findings of fact by the trial court or any reference to its reasoning. Accordingly, we have no idea as to which of the arguments raised by the defendants in their briefs on the motion for sanctions was accepted by the trial court, nor any other clue to the basis for the trial court's decision to impose sanctions and its determination of which sanctions were appropriate under the circumstances. Thus, we cannot determine whether the trial court abused its discretion.

¶ 41 In any appeal, it is the responsibility of the appellant to supply a complete record sufficient to permit review of the issues she wishes to raise on appeal. *People v. Carter*, 2015 IL 117709, ¶ 19. In the absence of such a record, we must presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Koppel v. Michael*, 374 Ill. App. 3d 998, 1008 (2007) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Any doubts that arise from the incompleteness of the record must be resolved against the appellant. *Carter*, 2015 IL 117709, ¶ 19.

¶ 42 The lack of an adequate record disposes of many of the plaintiff's arguments on appeal. For instance, the plaintiff argues generally that a lesser sanction would have been more appropriate. However, a trial court's determination of the appropriate sanction may not be overturned unless it abused its discretion. *Shimanovsky*, 181 Ill. 2d at 120. Here, the lack of an

adequate record means that we have no basis for finding such an abuse of discretion. *Foutch*, 99 Ill. 2d at 392. (We also note that the plaintiff never suggested any lesser sanction to the trial court.)

¶ 43 The plaintiff also contends that the six-factor test set out in *Shimanovsky* favors the imposition of a lesser sanction. In particular, she argues that the destruction of the fire scene did not prejudice the defendants (the second factor), because her legal theory was that ionization smoke detectors are inherently less safe (a design defect) and that the defendants should have warned consumers of this fact. Thus, she argues, the condition of the smoke detectors themselves was not relevant to her claims, and the inability to examine them had little detrimental effect on the defendants' ability to mount a defense. However, the defendants submitted an affidavit by their expert, Agosti, in which he averred that considerable relevant evidence could have been gained from an examination of the fire scene: the scene could have been searched by hand with the use of magnets to locate even small, burned pieces of the smoke detectors and batteries, showing who manufactured the smoke detectors and whether batteries were installed at the time of the fire. Such a search also could have shown whether fire was a "fast flaming" or smoldering fire, a fact relevant to the question of whether the ionization detectors allegedly present in the house performed worse than a photoelectric smoke detector would have performed. Agosti's affidavit (which was not countered by any submissions from the plaintiff) demonstrated real prejudice to the defendants arising from their inability to examine the fire scene. Thus, the nature of the plaintiff's legal theory does not demonstrate such a substantial lack of prejudice that it would justify overriding the trial court's determination of the appropriate sanction which, as we have noted, we must presume was correct.

¶ 44 Finally, the plaintiff argues that the trial court should have applied a different legal standard because the barring of so much of her evidence had the same practical effect as entering the sanction of dismissal. She points to a line of cases exemplified by *Adams v. Bath & Body Works, Inc.*, 358 Ill. App. 3d 387, 394 (2005), which hold that a case should not be dismissed under Rule 219(c) unless the plaintiff has acted in bad faith or in contempt of court orders. *Adams* rejected earlier cases cited by the defendants—*Kambylis v. Ford Motor Co.*, 338 Ill. App. 3d 788, 794 (2003), and *Graves v. Daley*, 172 Ill. App. 3d 35 (1988)—that upheld such dismissal even when the loss of the evidence occurred simply through negligence rather than any intentional act by the plaintiff. The plaintiff argues that the trial court in this case should have followed *Adams* rather than *Kambylis* and *Graves*, and should not have entered harsh sanctions that resulted in the entry of summary judgment. For a variety of reasons, we find that *Adams* does not assist the plaintiff.

¶ 45 As an initial matter, *Adams* (like another case cited by the plaintiff, *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135 (2004)) is factually distinguishable, because the plaintiff in those cases not only did not cause, but *did not even have any advance notice of*, the destruction of the key evidence. By contrast, although it is undisputed that the plaintiff here did not cause the destruction of the fire scene, the record is silent as to whether she knew of its impending destruction and could have taken steps to prevent that destruction. (The mere fact that she was not copied on the letter from the City to the Bank regarding the citation does not, in our opinion, establish the plaintiff's lack of knowledge.) Moreover, insofar as the *Adams* court appeared to regard a plaintiff's good faith as the sole relevant factor, its holding is contrary to the supreme court's adoption of the six-factor test in *Shimanovsky* and the principle that no single one of those factors is dispositive. Most important for our purposes here, due to the lack of a

proper record, we cannot tell *what* the legal basis for the trial court's decision was—perhaps it *did* adopt the same approach as the court in *Adams*, but determined that the plaintiff's conduct in not seeking the preservation of the fire scene (despite the unfair advantage gained by her own experts having had the opportunity to examine it) amounted to bad faith. As noted above, in the absence of an adequate record, we must presume that the trial court applied the correct legal standard. *Carter*, 2015 IL 117709, ¶ 19.

¶ 46 "[I]n the absence of a proper record a reviewing court may dismiss an appeal or, in the alternative, summarily affirm the judgment of the trial court." *Landau & Associates, P.C. v. Kennedy*, 262 Ill. App. 3d 89, 92 (1994). Here, we adopt the latter approach, and summarily affirm the trial court's order of November 4, 2015, imposing the sanctions detailed therein. Having affirmed the sanctions order, we also affirm the entry of summary judgment in favor of the defendants.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, the judgment of the circuit court of McHenry County is affirmed.

¶ 49 Affirmed.