

THIRD DIVISION
October 26, 2011

No. 1-10-3796

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

LAW OFFICES OF DONALD BATTAGLIA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 M2 3149
)	
KOLIO STOIANOF,)	Honorable
)	Roger G. Fein,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Steele and Justice Murphy concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant failed to provide an adequate record to review the trial court's order, a reviewing court must presume that the trial court's finding in favor of plaintiff in a breach of contract action was sufficiently supported by the evidence; therefore, the trial court's judgment will be affirmed.

¶ 2 Defendant, Kolio Stoianof, appeals, *pro se*, from the \$5,931 judgment in favor of the plaintiff, Law Offices of Donald Battaglia (Battaglia), following a bench trial in this breach of contract action. Stoianof contends that the trial court erred in finding against him because he paid Battaglia in full for his legal services. He further maintains that the judgment was unfair because

the trial court judge was friends with Battaglia. Battaglia has not filed a brief in response; however, we may proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Co.*, 63 Ill. 2d 128, 133 (1976). We affirm.

¶ 3 On October 22, 2009, Battaglia filed a complaint and alleged that on July 11, 2007, he entered into a written agreement with Stoianof. The agreement, which was attached to his complaint, stated that Battaglia would provide Stoianof with legal advice and services with respect to a lawsuit filed in the circuit court, *i.e.*, 3040 W. Diversey, LLC v. Stoianof. Stoianof agreed to pay Battaglia \$225 for each hour of work, plus out-of-pocket cash disbursements. Battaglia maintained in his complaint that his services included taking depositions, fully briefing and successfully arguing a motion for summary judgment and a motion to disqualify an expert witness, fully briefing and successfully defending motions to quash subpoenas, interviewing several potential expert witnesses, and preparing for trial. According to the complaint, Stoianof incurred \$15,062 in legal fees and costs, and Battaglia contended that Stoianof owed him \$6,980.50. Copies of outstanding invoices and statements sent to Stoianof were attached to the complaint. Battaglia thus requested that the trial court award him \$6,980.50 plus costs and interest.

¶ 4 On March 23, 2010, a default judgment was entered in favor of Battaglia and against Stoianof in the amount of \$6,980.50 plus \$326.04 in costs. Subsequently, on November 4, 2010, the trial court vacated the default judgment order, and Stoianof filed his answer to Battaglia's complaint on December 8, 2010. In his answer, Stoianof alleged that Battaglia unnecessarily dragged out the case, refused to disclose important information, and attempted to obtain as much money as possible, which included "double billing" him. Stoianof further alleged that Battaglia had unethical dealings with opposing counsel, including trying to help opposing counsel obtain payment. Stoianof attached to his answer invoices, copies of checks sent to Battaglia, e-mails, and information regarding the property at 3040 West Diversey Avenue.

¶ 5 The matter eventually proceeded to a bench trial on December 15, 2010. No verbatim transcript of the proceedings was taken, nor was a bystander's report prepared pursuant to Supreme Court Rule 323(c) (eff. Dec. 13, 2005). The trial court's December 15, 2010, order indicated that a judgment was entered in favor of Battaglia for \$5,635 with costs assessed against Stoianof in the amount of \$296. The total judgment in favor of Battaglia and against Stoianof was \$5,931. Stoianof filed a timely notice of appeal. In the notice of appeal, Stoianof stated that he was requesting a fair hearing because there was a conflict of interest at trial, *i.e.*, Battaglia was friends with the trial court judge.

¶ 6 On appeal, Stoianof contends that during the time that Battaglia provided legal services for him, Battaglia failed to present pertinent evidence to the trial court, postponed court dates, and continued to mail him bills despite the fact that he told Battaglia to cease working on the case. He further asserts that he paid Battaglia in full for the bills that he owed, and that Battaglia tried to use a witness named Richard Bivens to testify against him. Stoianof finally contends that he received an unfair trial because Battaglia and the trial court judge were friends.

¶ 7 Stoianof has failed to provide an adequate record on appeal to allow our review of these claims of error. The record consists of only the common law record and does not include a transcript of the proceedings from the December 15 trial. The appellant has the burden to provide a complete record on appeal. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of an adequate record, we presume that the trial court's decision conformed to the law and rested on a sufficient basis. *Foutch*, 99 Ill. 2d at 391-92.

¶ 8 Whether a contract exists, its terms, and the intent of the parties, are questions of fact that are determined by the trier of fact. *Peoria Harbor Marina v. McGlasson*, 105 Ill. App. 3d 723, 727 (1982). These questions of fact were obviously resolved at trial with testimony. The findings of the trial court will not be disturbed unless they are clearly contrary to the manifest weight of the

1-10-3796

evidence. *McGlasson*, 105 Ill. App. 3d at 727.

¶ 9 In light of these principles, and in the absence of an adequate record to review the court's order, we must presume that the trial court's finding in favor of Battaglia in the amount of \$5,931 was sufficiently supported by the evidence.

¶ 10 For the foregoing reasons, we affirm the judgment of the circuit court finding in favor of Battaglia in the amount of \$5,931.

¶ 11 Affirmed.