FIRST DIVISION
April 30, 2012

No. 1-11-0859

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ELTON ELLZEY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 M1 709554
	)	
SUNRISE TRANSPORTATION, INC., et al.,	)	Honorable
	)	Sheldon C. Garber,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

O R D E R

¶ 1 *Held*: Where defendant failed to provide an adequate record to review the trial court's order awarding plaintiff sanctions, we must presume that the trial court's finding was sufficiently supported by the evidence; the trial court's judgment was affirmed.

¶ 2 Defendant, Sunrise Transportation, Inc., appeals from an order of the circuit court awarding sanctions in favor of plaintiff, Elton Ellzey, and against defendant. Plaintiff has not filed a brief in response. However, we may proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976). We affirm.

¶ 3 The record shows that on April 22, 2009, plaintiff filed a forcible entry and detainer action against defendant seeking possession of 8512 South Vincennes Avenue in Chicago, outstanding rent, accrued interest, penalties, and costs. On June 9, 2009, defendant filed its answer, affirmative defenses, and counterclaim to plaintiff's complaint. The parties then engaged in extensive motion

practice.

¶ 4 On August 21, 2009, the trial court granted plaintiff's motion for an award of use and occupancy of the premises pending trial. In doing so, the trial court ordered defendant to make monthly payments of $6,300 to plaintiff, including $18,900 in retrospective payments. In September 2009, the court also granted plaintiff's motion to dismiss defendant's counterclaim without prejudice to raise it in a separate suit.

¶ 5 On July 9, 2010, the trial court entered an order dismissing the cause at bar for want of prosecution. On December 15, 2010, the trial court vacated the July 9 order and reinstated the matter. On January 24, 2011, the trial court entered an order reinstating the use and occupancy order *nun pro tunc*. In January 2011, defendant vacated the premises.

¶ 6 On February 16, 2011, plaintiff filed a petition for rule to show cause alleging that upon the dismissal of this case on July 9, 2010, defendant ceased making payments for use and occupancy of the premises and, even though the case was reinstated in December 2010, defendant continued to refuse to make the payments. Plaintiff alleged he made two written demands for payment and made several phone calls to defendant regarding the outstanding use and occupancy payments, to no avail. Plaintiff, thus, moved the trial court to enter an order against defendant to show cause why defendant should not be held in contempt of court and punish defendant for its failure to comply with the use and occupancy order. Plaintiff attached to his petition two demand letters which indicated defendant owed him a total of $31,500 for its failure to pay the $6,300 monthly payments for September 2010 through January 2011 as required by the use and occupancy order.

¶ 7 In its response, defendant maintained plaintiff should not be awarded sanctions for defendant's undisputed failure to make use and occupancy payments. Defendant further averred that this matter may only be disposed of through a hearing on the merits regarding the efficacy of its offsetting claims, which could exceed the amount of use and occupancy and rent owed to plaintiff.

¶ 8 On March 9, 2011, the trial court ordered, as a sanction, a judgment in favor of plaintiff and

against defendant in the amount of $31,500 for use and occupancy of the premises for the months of September 2010 through January 2011. The judgment order expressly states the court was "duly advised in the premises" and heard arguments of counsel for both parties. The record on appeal does not include a report of proceedings of this, or any hearing.

¶ 9 On appeal, defendant contends the trial court erred in ordering sanctions against it because there was no evidentiary hearing, no finding of willfulness, and no specific finding of contempt.

¶ 10 The decision as to whether to impose sanctions is within the sound discretion of the trial court and we will not reverse its decision absent an abuse of that discretion. *Graham v. Hildebrand*, 248 Ill. App. 3d 742, 743 (1993). Here, we are unable to determine whether the trial court abused its discretion because defendant has not provided a sufficient record that permits us to do so. The record contains plaintiff's petition for rule to show cause, defendant's response, and the trial court's order. However, the record does not contain a transcript from the hearing on plaintiff's petition for rule to show cause, or an acceptable alternative from which we may ascertain the rulings of the court. See Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005); *Lill Coal Co. v. Bellario*, 30 Ill. App. 3d 384, 385 (1975). We note that although defendant maintains the trial court never conducted an evidentiary hearing on plaintiff's petition, the trial court's order clearly shows a hearing was held where counsel for both sides presented argument.

¶ 11 Defendant as appellant has the responsibility to provide a complete record on review. *Tekansky v. Pearson*, 263 Ill. App. 3d 759, 764 (1994). Absent a complete record, a reviewing court will presume the circuit court had a sufficient factual basis for its decision and any doubts arising from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Here, where defendant failed to attach the report of proceedings, or an acceptable substitute under Rule 323(c), we must presume the court's decision was proper and affirm the order of the circuit court awarding sanctions to plaintiff. Most notably, this "presumption of correctness in the circuit court is especially strong when, as here, there is an indication the court

below was 'fully advised in the premises'." *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 758 (2006). The court in the instant cause specifically stated in the order on appeal, it had been "duly advised in the premises." Furthermore, defendant advances the identical arguments which were presented to and rejected by the circuit court.

¶ 12 For the foregoing reasons, we affirm the judgment of the circuit court finding in favor of plaintiff in the amount of $31,500.

¶ 13 Affirmed.