FIFTH DIVISION
September 12, 2014

No. 1-13-0313

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BEVERLY HIGHTOWER, Plaintiff/ Counterdefendant-Appellant, v. GLENN HINKLE, Defendant/ Counterplaintiff-Appellee And HENRIETTA HINKLE A/K/A HENRIETTA AKINS, Counterplaintiff-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 10 M1 720931 Honorable Leonard Murray, Judge Presiding.

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

O R D E R

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

¶ 2 Following a bench trial in this forcible entry and detainer action filed by plaintiff/counterdefendant landlord Beverly Hightower d/b/a L & L Property Development, LLC (landlord), and the affirmative defenses and counterclaims of defendant/counterplaintiff tenant Glenn Hinkle (tenant), the trial court entered a judgment in favor of landlord and against tenant in the amount of $12,850 plus costs. In addition, the trial court entered judgment in favor of landlord and against tenant in the amount of $390 for attorney fees incurred by landlord. The court also entered judgment in favor of tenant and against landlord in the amount of $2,500 plus costs. On appeal, landlord raises six issues and requests that this court modify the judgment in conformity with the evidence or, in the alternative, reverse the decision and remand the cause for a new trial. Tenant has not filed a brief in response; however, we may proceed under the principles set forth in *First Capitol Mortgage Corporation v. Talandis Construction Corporation*, 63 Ill. 2d 128, 133 (1976). We affirm.

¶ 3 The record shows that landlord entered into a written lease on October 29, 2007, with tenant and Henrietta Hinkle a/k/a Henrietta Akins, who is not a party to this appeal but apparently lived with tenant, to rent 7651 South Cregier Avenue in Chicago for $1,350 per month for the first year, which was due on the first day of each month. In addition, tenant and Henrietta paid a security deposit of $2,600. Accompanying the lease was a "Rent with Option to Buy Rider," which listed various tenant and owner responsibilities. The tenant responsibilities included maintaining the grounds, appliances, utilities, and basement. The "Rent with Option to Buy Rider" also noted that the security deposit was twice the rent less one hundred dollars, and was non interest bearing.

¶ 4 Landlord filed a complaint against tenant Glenn Hinkle only on September 2, 2010, for possession of 7651 South Cregier Avenue and $8,550 in rent and damages for withholding possession of said premises.

¶ 5 In response to the complaint, tenant and Henrietta filed an affirmative defense and a four-count counterclaim against landlord. As an affirmative defense, tenant and Henrietta maintained that landlord breached the implied warranty of habitability because the residence had substantial defective conditions including flood damage, failure to raise a fence per the terms of the lease, a faulty backdoor, and the rent was in excess of the value of the residence. No remedial action was taken by landlord to address these problems, and tenant and Henrietta requested that their rent be offset by $9,500. Tenant and Henrietta alleged in their counterclaims that landlord failed to pay interest on their security deposit in violation of section 5-12-080(c) of the Residential Landlord Tenant Ordinance of the City of Chicago (RLTO) (Chicago Municipal Code § 5-12-080(c) (amended July 28, 2010)), and requested $2,500 in damages. They also alleged, based on similar deficiencies detailed in their affirmative defense, that landlord failed to maintain the residence in compliance the Chicago Municipal Code, and again requested $9,500 for overpayment of rent. Tenant and Henrietta further requested $100 in damages for landlord's failure to attach a RLTO summary, and $2,500 in damages for landlord's failure to provide a fence for the backyard and for her failure to abate the damages caused by the flood.

¶ 6 In response to tenant and Henrietta's affirmative defense, landlord denied all of the allegations that the residence had substantial defective conditions and requested that the affirmative defenses be dismissed. Landlord also denied all of the allegations contained in tenant and Henrietta's counterclaim on the basis that section 5-12-020(d) of the RLTO (Chicago Municipal Code § 5-12-020(d) (amended June 11, 2008)), excludes "[a] dwelling unit that is

occupied by a purchaser pursuant to a real estate purchase contract prior to the transfer of title to such property to such purchaser ***." The parties then engaged in motion practice, and the depositions of tenant and Henrietta were taken on July 12, 2011.

¶ 7 A two-day trial occurred on December 19 and December 20, 2011. The record on appeal does not include a report of proceedings of this trial, or any other hearing.

¶ 8 Following the trial, several continuances occurred before the court entered a judgment. During that time, landlord filed a motion for entry of judgment on July 31, 2012, stating that she had been patiently waiting for a decision in this case, and requested that a judgment be entered. In the motion, landlord pointed out that the judge continued the matter on January 13, 2012, the date upon which judgment was supposed to be entered, for further evidence of the ownership of the property. The judge then continued the matter several more times for various reasons. After landlord filed this motion, more continuances were entered.

¶ 9 On September 19, 2012, the trial court entered a judgment, finding in favor of landlord and against tenant in the amount of $12,850 plus costs, and for tenant and against landlord in the amount of $2,500 plus costs. The court further entered a judgment in favor of landlord and against tenant in the amount of $390 for attorney fees incurred by landlord.

¶ 10 On October 16, 2012, landlord, through her attorney Marvin Gray, filed a posttrial motion, alleging that the court's judgment overwhelmingly indicated that substantial injustice was done between the litigants and, with regard to landlord, the judgment was patently contrary to the manifest weight of the evidence. In particular, landlord contended that, during trial, tenant and Henrietta admitted to owing $15,000 to $20,000 in rent, and that their testimony should have been accepted by the court as binding judicial admissions. Furthermore, the purported corroborative testimony of an individual named Ginni Cook was unrebutted, as well as the lease

provisions providing that tenant bore the responsibilities for the maintenance of the property after the lease was executed. Landlord also maintained that the trial court failed to promptly render a judgment in violation of Canon 3 of the Code of Judicial Conduct (Ill. S. Ct. R. 63 (eff. July 1, 2013)), delaying her ability to execute on a proper judgment for the owed funds. Landlord insisted that the trial court should have entered the September 2012 judgment on a *nunc pro tunc* basis. She thus requested that the trial court's judgment be vacated or modified to render a monetary judgment for her that more properly reflected the evidence adduced and the damages she sustained or, in the alternative, that the cause be remanded for a new trial.

¶ 11 On December 17, 2012, the trial court entered an order denying landlord's posttrial motion. In denying the motion, the court noted that tenant failed to file a response to the posttrial motion, or appear at the hearing. The court further stated that it was otherwise "fully advised in the premises." Again, the record on appeal does not include a report of proceedings from this hearing.

¶ 12 On appeal, landlord raises six distinct issues on appeal, including that the trial court's judgment was against the manifest weight of the evidence because the evidence showed that tenant and Henrietta owed her $23,000 for past due rent and $6,390.26 for repairs, but the court only entered a judgment in her favor for $12,850. In so arguing, she points to the deposition testimony of tenant and Henrietta, particularly her deposition testimony that she and tenant owed landlord at least $20,000 in rent, an unknown amount of money for utilities, that landlord complied with all the promises she made, except the basement bathroom and a fence landlord promised to install but never did, and that she and tenant never made any written complaints to landlord about the property. Landlord also points to tenant’s trial testimony where he allegedly stated that he owed landlord at least $23,000 in back rent, that all of the conditions under the

lease were completed except for the fence in the backyard, and that no complaints were ever made about the property to landlord.

¶ 13 In reviewing a trial court's decision following a bench trial, the standard of review is whether the judgment is against the manifest weight of the evidence. *Avenaim v. Lubecke*, 347 Ill. App. 3d 855, 861 (2004). "'A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.'" *Id.*, quoting *Judgment Services Corporation v. Sullivan*, 321 Ill. App. 3d 151, 154 (2001).

¶ 14 Here, we are unable to determine whether the trial court's decision was against the manifest weight of the evidence because landlord has not provided a sufficient record to permit us to do so. The record contains the lease, landlord's complaint, tenant's affirmative defenses and counterclaims, depositions of tenant and Henrietta, the trial court's order, landlord's posttrial motion, and the court order denying the posttrial motion. However, the record does not contain an agreed statement of facts, a transcript from the bench trial, or an acceptable alternative from which we may ascertain the evidence or the reasons for the court's rulings. See Ill. S. Ct. R. 323(c),(d) (eff. Dec. 13, 2005); *Lill Coal Company v. Bellario*, 30 Ill. App. 3d 384, 385 (1975).

¶ 15 Landlord, 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 that the trial 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, landlord failed to attach the report of proceedings, a bystander's report pursuant to Supreme Court Rule 323(c), or an agreed statement of facts under Supreme Court Rule 323(d). Accordingly, we must presume that the court's

decision was proper and affirm the order of the trial court awarding landlord $12,850, $390 for attorney fees, as well as the $2,500 judgment in favor of tenant.

¶ 16 Landlord next contends that the court erred when it rendered a $2,500 judgment in favor of tenant. Although we cannot glean from the record the reasons why the court entered a judgment in favor of tenant for $2,500, landlord maintains that the court awarded this amount to tenant based on his counterclaim that landlord failed to place his security deposit in an interest bearing account. Landlord asserts that the court erred in entering this judgment because it failed to recognize that when the lease contains a "Rent with Option to Buy Rider," as in this case, there is an exception to the obligation to place a security deposit in an interest bearing account. Landlord alerts us to section 5-12-020 of the RLTO, which was the same section she used in support of her argument to deny the allegations in tenant's counterclaims, to show that she was not required to put tenant's security deposit in an interest bearing account. The pertinent subsection cited to by landlord states,

> "Rental of the following dwelling units shall not be governed by this chapter, unless the rental agreement thereof is created to avoid the application of this chapter:
>
> ***
>
> (d) A dwelling unit that is occupied by a purchaser pursuant to a real estate purchase contract prior to the transfer of title to such property to such purchaser, or by a seller of property pursuant to a real estate purchase contract subsequent to the transfer of title from such seller[.]" Chicago Municipal Code § 5-12-020(d) (amended June 11, 2008)).

Landlord contends that despite the fact that the above exclusion was pointed out to the trial judge during closing argument, it entered a judgment in favor of tenant. As in the first issue, however, we must presume that the trial court had a sufficient factual basis to render a $2,500 judgment in favor of tenant where the record on appeal is insufficient to determine if the court's judgment was against the manifest weight of the evidence. *Foutch*, 99 Ill. 2d at 392.

¶ 17 Landlord also maintains that the trial court erred when it denied her posttrial motion. In reviewing the trial court's denial of landlord's posttrial motion, this court applies an abuse of discretion standard. See *Lawlor v. North American Corporation of Illinois*, 2012 IL 112530, ¶ 38 (stating that the court of review "will not reverse the trial court's ruling on a motion for a new trial unless it is affirmatively shown that the trial court abused its discretion").

¶ 18 We are unable to review the trial court's denial of landlord's posttrial motion for an abuse of discretion because we do not have the transcripts of the hearing on the motion. The written order does not explain how the court came to its conclusion, and, because we do not have a complete record, we must again presume that the trial court had a sufficient factual basis for its decision (*Foutch*, 99 Ill. 2d at 392), which included the rejection of landlord's contentions now on appeal that the September 2012 judgment should have been entered *nunc pro tunc*, and that the judge was in violation of Canon 3 of the Code of Judicial Conduct for its delay in rendering said judgment. We also note that despite the fact that tenant never responded to landlord's posttrial motion, or appeared at the hearing, the trial court denied the motion after stating in its written order that it was "fully advised in the premises." The trial court's written order thus supports our decision to presume that the trial court's judgment denying landlord's posttrial motion was correct. See *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 758 (2006), quoting *Mars v. Priester*, 205 Ill. App. 3d 1060, 1066 (1999) (stating that the "presumption of correctness in the

circuit court is especially strong when, as here, there is an indication that the court below was 'fully advised in the premises.'").

¶ 19 Finally, landlord asserts in her brief on appeal that the trial court erred when it rendered judgment for her against tenant only, rather than against both tenant and Henrietta because both parties signed the lease and occupied the premises. Notably, landlord filed her complaint against tenant only, so it logically follows that the court would only enter judgment in favor of landlord and against tenant alone. Henrietta's name only appeared when she and tenant filed counterclaims against landlord, and it was permissible for Henrietta to join tenant in his counterclaim against landlord. See 735 ILCS 5/2-614(a) (West 2010) (stating that "[a]ny plaintiff or plaintiffs may join any causes of action, against any defendant or defendants; and the defendant may set up in his or her answer any and all cross claims whatever, whether in the nature of recoupment, setoff or otherwise, which shall be designated counterclaims"). We thus find that the trial court did not err in entering judgment against tenant alone.

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 21 Affirmed.