2012 IL App (2d) 111327-U
No. 2-11-1327
Order filed August 16, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ENVISION GRAPHICS, LLC,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-AR-2111
	)	
RICK DOMERACKI,	)	Honorable
	)	Bruce R. Kelsey,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

Held: The judgment was affirmed; the trial court did not enter judgment on a theory not contained in plaintiff's complaint; the judgment was not against the manifest weight of the evidence; trial court did rule on defendant's affirmative defense; trial court properly awarded attorney fees to plaintiff under applicable contract provision.

¶ 1 Defendant, Rick Domeracki, appeals from a judgment in the amount of $39,527.09 and an award of attorney fees in the amount of $3,500 entered against him and in favor plaintiff, Envision Graphics, LLC, following a bench trial. The trial court's judgment was based upon a provision in an employment agreement that required defendant, a former sales employee of plaintiff paid on commission, to pay to plaintiff any negative balance in his commission bank account upon the

termination of his employment. The employment agreement also contained a fee-shifting provision. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 In August 2006, defendant entered into an employment agreement with plaintiff that incorporated a "Commission Plug-in Compensation Addendum" (collectively, the agreement). The agreement allowed defendant to receive a weekly draw of $850 on his commission bank account, but provided that defendant owed to plaintiff any negative balance in the account upon the termination of his employment. Plaintiff terminated defendant's employment in April 2009. In June 2010, plaintiff filed a one-count complaint against defendant alleging that defendant owed $39,527.09 to plaintiff. Plaintiff's complaint, which was entitled "Breach of Contract," alleged the following:

> "2. That on or about the time period of August 28[,] 2006, PLAINTIFF(s) rendered services and/or materials on open account to DEFENDANT(s) pursuant to request by DEFENDANT(s).
>
> 3. That attached hereto and made a part hereof and marked as PLAINTIFF's EXHIBIT A, is a document of said account.
>
> 4. PLAINTIFF performed all that was required of him/her/it/them under the contract(s) to provide services and/or materials on open account.
>
> 5. That there is due and owing to PLAINTIFF from DEFENDANT the sum of $39[,]527.09, plus attorney fees, upon which demand has been made, of which DEFENDANT fails and refuses to pay."

The agreement was attached to the complaint. Defendant, who was *pro se* in the trial court, raised no objection to plaintiff's complaint and filed an answer admitting all allegations except for the fifth, which he denied. Defendant also asserted various affirmative defenses and counterclaims.

¶ 4 At trial, plaintiff introduced the agreement into evidence, as well as copies of defendant's sales reports and commission statements. Plaintiff's controller, Laura Moses, who was responsible for keeping records of sales employees' commissions, testified that, when defendant's employment terminated, defendant's commission bank account had a negative balance of $39,527.09.

¶ 5 Keven Franz, plaintiff's president and co-owner, testified that plaintiff terminated defendant's employment for poor performance. On cross-examination, Franz agreed that plaintiff was required under the agreement to provide a "commercially acceptable product," but he denied that the quality of plaintiff's products affected defendant's income. Franz also testified on cross-examination that defendant would have been eligible for a commission of $1,199.80 on a $21,000 sale had he invoiced the sale prior to his termination. Norbert Pivaronas, plaintiff's vice president of sales, also testified that plaintiff terminated defendant for "lack of performance."

¶ 6 Defendant offered himself as his only witness. He testified that the substandard quality of plaintiff's products resulted in the loss of customers and a reduction in his commissions.

¶ 7 The trial court entered judgment in the amount of $39,527.09 in favor of plaintiff and against defendant. Pursuant to a fee-shifting provision in the agreement, the court also awarded plaintiff attorney fees in the amount of $3,500 and costs in the amount of $339. Defendant retained counsel for purposes of filing a postjudgment motion, in which defendant sought reversal of the judgment or, alternatively, a new trial. The trial court denied the motion, and defendant timely appealed.

¶ 8 ANALYSIS

¶ 9 Defendant argues on appeal that (1) the trial court erred in entering judgment on a breach of contract theory not contained in plaintiff's complaint; (2) the trial court's judgment was not supported by evidence; (3) the trial court failed to rule on defendant's "affirmative defense" that plaintiff materially breached the agreement; and (4) the trial court erred in awarding plaintiff attorney fees under an allegedly inapplicable provision of the agreement.

¶ 10 Recovery on Theory Not Contained in Plaintiff's Complaint

¶ 11 Defendant argues that the trial court erred in entering judgment for plaintiff on a breach of contract theory, when plaintiff's complaint stated a cause of action for recovery on an open account, not for breach of contract. Plaintiff responds that defendant waived any objection to plaintiff's complaint by failing to raise the issue before the trial court and that, nevertheless, the complaint stated a cause of action for breach of contract. Defendant responds that he did not object to any deficiencies in plaintiff's complaint in the trial court because the complaint "properly" stated a cause of action for recovery on an open account. Defendant argues that "[t]he trial court's error was in allowing the plaintiff to proceed to trial on a completely different claim."

¶ 12 Section 603(a) of the Code of Civil Procedure (Code) requires a complaint to "contain a plain and concise statement of the pleader's cause of action." 735 ILCS 5/2-603(a) (West 2010). Illinois is a fact-pleading state, which requires a plaintiff to allege ultimate facts that support his or her cause of action. *Schultz v. Schultz*, 297 Ill. App. 3d 102, 106 (1998). Thus, to maintain a claim under a specific theory, a plaintiff must allege facts supporting all of the essential elements of a cause of action based on that theory. *Behr v. Club Med, Inc.*, 190 Ill. App. 3d 396, 409 (1989). However, courts are to liberally construe pleadings with a view to doing substantial justice between the parties.

735 ILCS 5/2-603(b) (West 2010). "No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet." 735 ILCS 5/2-612(c) (West 2010).

¶ 13 As defendant maintains, even liberal construction of pleadings will not permit a plaintiff to recover on a theory that is not contained in his or her complaint. *Schultz*, 297 Ill. App. 3d at 106. "It is axiomatic that a party must recover, if at all, on and according to the case he has made for himself by his pleadings." *Lempa v. Finkel*, 278 Ill. App. 3d 417, 424 (1996). " 'Proof without pleadings is as defective as pleadings without proof.' " *Schultz*, 297 Ill. App. 3d at 106 (quoting *Keno & Sons Construction Co. v. La Salle National Bank*, 214 Ill. App. 3d 310, 312 (1991)).

¶ 14 As a preliminary matter, we agree with defendant that the waiver rules concerning objections to pleadings do not apply to his contention that the trial court permitted plaintiff to recover on a theory that was not contained in plaintiff's complaint. The Code provides that "[a]ll objections to pleadings shall be raised by motion." 735 ILCS 5/2-615(a) (West 2010). It also provides that "[a]ll defects in pleadings, either in form or substance, not objected to in the trial court are waived." 735 ILCS 5/2-612(c) (West 2010). Thus, where a defendant files an answer to a complaint and proceeds to trial, any defect in the pleading is waived. *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 60 (1994). Here, rather than object to any defect in plaintiff's complaint, defendant concedes that the complaint stated a cause of action for recovery on an account, but maintains that the trial court permitted plaintiff to recover on a different theory entirely—namely, breach of contract. Defendant raised this issue before the trial court in his postjudgment motion; therefore, we do not deem it waived.

¶ 15 Nevertheless, we reject defendant's argument that the trial court permitted plaintiff to recover on a theory not contained in its complaint. While there is little case law on the subject, it is clear that

Illinois courts historically have recognized a cause of action for money due on an account. See, *e.g.*, *George v. De Kalb County*, 285 Ill. App. 16, 18 (1936) (involving an "action on an account" to recover a balance due); see also 1 Illinois Law & Practice, Account, Action on § 1, at 103-04 (2010) ("Under early law, it has been held that an action will lie for money due on an account."). Defendant's contention that the trial court permitted plaintiff to recover on an entirely different theory than the one contained in its complaint ignores that an action for money due on an account is, in essence, an action for breach of contract. 1 Am. Jur. 2d, Accounts and Accounting § 8 (1994) ("The elements of proof of an action on account are essentially the same as those in any other contractual action ***."); see also *Beco Construction Company, Inc. v. Harper Contracting, Inc.*, 130 Idaho 4, 8 (1997) ("Although an open account is a particularized type of contract claim, it is a contract claim."); *Cooper & Pachell v. Haslage*, 142 Ohio App. 3d 704, 707 (2001) ("An action on an account is an action for a breach of contract." (Internal quotation marks omitted.)). Thus, plaintiff's complaint, which was entitled "Breach of Contract" and alleged money due on an "open account," did put defendant on notice of the nature of the claim he was called upon to meet. See 735 ILCS 5/2-612(c) (West 2010) ("No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet."). Indeed, given that defendant's "affirmative defenses" consisted of traditional contract defenses (*i.e.*, "anticipatory repudiation," "breach by plaintiff," "duress," "[m]itigation of [d]amages," "failure of condition precedent," "failure to act in a commercially reasonable manner," and "illegality"), the record supports our conclusion that plaintiff's complaint put defendant on notice of the nature of plaintiff's claim.

¶ 16 To the extent that defendant contends that plaintiff's complaint was defective in that it did not allege sufficient facts to state a claim for breach of contract, we agree with plaintiff that defendant has waived any such defects. As discussed above, when a defendant answers a complaint and proceeds to trial, the defendant waives any objections to the sufficiency of the complaint. *Adcock*, 164 Ill. 2d at 60-61. An exception to this rule, inapplicable here, is that a defendant may raise at any time the issue of whether a complaint states a recognized cause of action. *Adcock*, 164 Ill. 2d at 61. Here, defendant not only answered plaintiff's complaint and proceeded to trial, he also admitted four out of the complaint's five allegations. Consequently, even if plaintiff's complaint contained an incomplete or insufficient statement of a cause of action for breach of contract, it is too late for defendant to object to any alleged deficiencies. See *Adcock*, 164 Ill. 2d at 61-62.

¶ 17 Defendant's reliance on *Mandel v. Hernandez*, 404 Ill. App. 3d 701 (2010), is misplaced. *Mandel* concerned section 2-616(c) of the Code, which permits a party to amend a pleading at any time " 'to conform the pleadings to the proofs.' " *Mandel*, 404 Ill. App. 3d at 707 (quoting 735 ILCS 5/2-616(c) (West 2002)). The court held that a motion under that section would not permit the plaintiff to amend her complaint, which originally sought monetary damages in the alternative to specific performance, to instead seek monetary damages in addition to specific performance. *Mandel*, 404 Ill. App. 3d at 708. The court reiterated that "[a]mending a complaint to add a new cause of action is not a proper postjudgment motion." *Mandel*, 404 Ill. App. 3d at 710. Here, plaintiff did not seek to add a new cause of action by amending its complaint to conform the pleadings to the proofs, nor did it need to do so. Therefore, *Mandel* is inapposite.

¶ 18 Sufficiency of the Evidence

¶ 19 Defendant next argues that plaintiff failed to introduce sufficient evidence of a breach of the agreement by defendant, or of damages caused by any such breach. Plaintiff responds that it presented evidence that defendant's commission bank account had a negative balance upon his termination and that the balance "remained unpaid." Defendant contends that plaintiff never elicited any testimony that defendant failed or refused to pay the claimed negative balance or that the balance "remained unpaid" at the time of trial.

¶ 20 As a preliminary matter, we note that both parties have cited an incorrect standard of review. Defendant contends that our standard of review is *de novo*, while plaintiff contends that our standard of review is abuse of discretion. It is well settled that our standard of review of a judgment following a bench trial is whether the judgment was against the manifest weight of the evidence. *Dargis v. Paradise Park, Inc.*, 354 Ill. App. 3d 171, 177 (2004). A judgment following a bench trial is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the judgment is unreasonable, arbitrary, or not based on evidence. *Dargis*, 354 Ill. App. 3d at 177. We cannot substitute our judgement for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn therefrom. *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002). Moreover, we must draw from the evidence all reasonable inferences in support of the judgment. *H&H Press, Inc. v. Axelrod*, 265 Ill. App. 3d 670, 679 (1994).

¶ 21 "To prevail on a breach of contract claim, the plaintiff must plead and prove that (1) a contract existed; (2) the plaintiff performed his obligations under the contract; (3) the defendant breached the contract; and (4) the plaintiff sustained damages as a result of the defendant's breach." *Anderson v. Kohler*, 397 Ill. App. 3d 773, 785 (2009). Here, in his answer to plaintiff's complaint, defendant admitted that the agreement existed and that plaintiff performed its obligations under the

agreement. "It is axiomatic that an admission in an answer constitutes a formal judicial admission and is conclusive on the person making it." *Board of Education of Township High School District No. 205 v. Faculty Ass'n of District 205*, 120 Ill. App. 3d 930, 935 (1983). Thus, at trial, plaintiff had to establish by a preponderance of the evidence only that defendant breached the agreement and that plaintiff sustained damages as a result of defendant's breach. See *Konstant Products, Inc. v. Liberty Mutual Fire Insurance Co.*, 401 Ill. App. 3d 83, 86 (2010) (noting that the effect of a judicial admission is to withdraw a fact from issue and to dispense with the need for proof of the fact).

¶ 22 As stated above, the agreement, which was introduced into evidence, provided that defendant's pay would be based entirely on sales commissions. It further provided that plaintiff would pay defendant a weekly commission draw of $850 per week, which would be debited against sales commissions that defendant earned. The agreement then stated that, upon the termination of his employment, defendant would owe to plaintiff "any negative value of the commission bank account." During her testimony, Moses explained the numbers and calculations that were contained in defendant's sales reports and commission statements admitted into evidence and testified how plaintiff kept track of the balance of defendant's commission bank account. She testified that, when defendant's employment terminated, defendant's commission bank account had a negative balance. The final unpaid balance for which plaintiff contended defendant was liable was $39,527.09. When asked whether this amount was the "unpaid balance," Moses answered, "Correct."

¶ 23 Taken together, the agreement and Moses' testimony are evidence that defendant breached the agreement and that plaintiff incurred damages as a result. Moses did not testify that the account had merely a negative balance, she testified that had an *unpaid* negative balance. It is reasonable to infer from Moses's testimony that the $39,527.09 "unpaid balance" remained unpaid at the time of

trial. We reject defendant's contention that plaintiff presented no evidence of a breach or of damages simply because plaintiff did not elicit testimony that defendant "refused to pay" the negative balance. While testimony to that effect would have been additional evidence of a breach of the agreement, given the evidence presented, we cannot conclude that the trial court's judgment was against the manifest weight of the evidence. See *Dargis*, 354 Ill. App. 3d at 177 (noting that a judgment following a bench trial is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the judgment is unreasonable, arbitrary, or not based on evidence).

¶ 24 Failure to Rule on Defendant's Affirmative Defense

¶ 25 Defendant next contends that the trial court "never ruled on" his "affirmative defense" that plaintiff's alleged material breach of the agreement "prevented" defendant from performing his obligations under the agreement.[1] Defendant further contends that he offered evidence to support his claim that plaintiff materially breached the agreement. Plaintiff responds that the trial court implicitly ruled on all of defendant's affirmative defenses and that the evidence defendant cites does not support his assertion that plaintiff breached the agreement.

¶ 26 Initially, we agree with plaintiff that the trial court ruled upon defendant's affirmative defenses and counterclaims. A trial court in a nonjury civil case is not required to make specific findings, and, in their absence, a reviewing court will assume that the trial court found in favor of the prevailing party on all issues and controverted facts. *Nemeth v. Banhalmi*, 125 Ill. App. 3d 938, 959 (1984). Here, the court's initial judgment order simply stated, "The Court finds for plaintiff and

[1]Defendant's answer contained nine affirmative defenses and six counterclaims. However, his arguments on appeal relate only to the "affirmative defense" that plaintiff materially breached the contract.

against defendant." We can safely assume that the trial court found in favor of plaintiff on all issues, including defendant's affirmative defenses. The trial court later clarified that the judgment order in favor of plaintiff was as to both the complaint and defendant's counterclaims, which supports our conclusion.

¶ 27 However, there is another reason to reject defendant's contention that the trial court failed to rule on defendant's "affirmative defense" that plaintiff materially breached the agreement—namely, that material breach of contract is not an affirmative defense. "The test for whether a defense is an affirmative defense that must be pled is whether the defense gives color to the opposing party's claim and then asserts new matter by which the apparent right is defeated." *Ferris Elevator Company, Inc. v. Neffco, Inc.*, 285 Ill. App. 3d 350, 354 (1996). Section 2-613(d) provides as examples of affirmative defenses the following: "payment, release, satisfaction, discharge, license, fraud, duress, estoppel, laches, statute of frauds, illegality." 735 ILCS 5/2-613(d) (West 2010). A defense that does not "give color to" the plaintiff's claim but, rather, attacks the sufficiency of the claim is not an affirmative defense. *Worner Agency, Inc. v. Doyle*, 121 Ill. App. 3d 219, 222-23 (1984). In the case of an alleged breach of contract, the plaintiff is required to prove that he or she substantially complied with the material terms of the agreement. *James v. Lifeline Mobile Medics*, 341 Ill. App. 3d 451, 455 (2003); *Allsopp Sand & Gravel, Inc. v. Lincoln Sand & Gravel Co.*, 171 Ill. App. 3d 532, 536 (1988). Accordingly, the defense that plaintiff materially breached the agreement is not an affirmative defense but, rather, is an attack on the sufficiency of plaintiff's claim.

¶ 28 Additionally, defendant ignores that, in his answer to plaintiff's complaint, he admitted plaintiffs' allegation that it had "performed all that was required of him/her/it/them under the

contract(s) to provide services and/or materials on open account." See *Board of Education of Township*, 120 Ill. App. 3d at 935 ("It is axiomatic that an admission in an answer constitutes a formal judicial admission and is conclusive on the person making it."). Therefore, plaintiff was not required to present evidence that it performed its obligations under the agreement. See *Konstant Products, Inc.*, 401 Ill. App. 3d at 86.

¶ 29 Even ignoring defendant's admission, to the extent that defendant posits that the trial court's judgment was against the manifest weight of the evidence because he presented evidence that plaintiff materially breached the agreement, we reject defendant's contention. Defendant contends that he gave "unrebutted" testimony that plaintiff "produced substandard quality print product for various customers serviced by the defendant, and that the loss of those customers prevented him from earning commissions that would have retired his alleged accrued negative balance." Defendant elicited testimony from Franz that plaintiff was required under the agreement to provide a "commercially acceptable product." Defendant testified that the substandard quality of plaintiff's products resulted in the loss of customers and a reduction in his commissions. However, defendant's testimony was not unrebutted. When defendant asked Franz on cross-examination whether the quality of plaintiff's products affected defendant's income, Franz testified, "No." When defendant asked him whether JP Morgan Chase, a former customer, left due to quality issues, Franz testified, "Not that I'm aware." The court heard this evidence and rendered its judgment. Given that there was evidence supporting the judgment, it would be improper for us to substitute our judgment for that of the trial court regarding the weight to be given to the evidence. See *D.F.*, 201 Ill. 2d at 498-99.

¶ 30 Defendant further contends that plaintiff terminated his employment during a month of good sales in order to avoid crediting defendant with the commissions, as well as to avoid paying him a $5,000 bonus, which plaintiff had offered as a reward to the first employee to achieve $100,000 in sales. The evidence does not support defendant's assertions. The agreement provided that a terminated employee would receive a commission for any sale that was invoiced prior to the employee's termination. Franz testified that defendant was not eligible for a commission of $1,199.80 on a $21,000 sale that he had not invoiced prior to his termination. As stated above, Pivaronas testified that plaintiff did not terminate defendant "based on a few thousand dollars," but for "lack of performance" during his three years of employment and after having discussions with defendant regarding his sales performance "numerous times." During his testimony, Franz also denied that defendant would have been eligible for the $5,000 bonus.

¶ 31 Attorney Fees

¶ 32 Defendant's final contention is that the trial court improperly awarded plaintiff attorney fees under an allegedly inapplicable fee-shifting provision. Plaintiff argues that defendant has waived this issue by failing to raise it before the trial court. Alternatively, plaintiff argues that the agreement's fee-shifting provision was applicable.

¶ 33 We reject plaintiff's waiver argument. Pursuant to Illinois Supreme Court Rule 366(b)(3)(ii) (eff. Feb. 1, 1994), in an appeal from a judgment in a nonjury case, "[n]either the filing of nor the failure to file a post judgment motion limits the scope of review." Therefore, we will address defendant's argument despite his failure to raise the issue in his postjudgment motion.

¶ 34 " 'Illinois generally follows the 'American Rule': absent statutory authority or a contractual agreement between the parties, each party to litigation must bear its own attorney fees and costs[,

and may not recover those fees and costs] from an adversary.' " *Fontana v. TLD Builders, Inc.*, 362 Ill. App. 3d 491, 510 (2005) (quoting *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 572 (2000)). A court must strictly construe a contractual provision providing for attorney fees, which requires construing the provision " 'to mean nothing more—but also nothing less—than the letter of the text.' " *Bjork v. Draper*, 381 Ill. App. 3d 528, 544 (2008) (quoting *Erlenbush v. Largent*, 353 Ill. App. 3d 949, 952 (2004)). Construction of an attorney fee provision in a contract is a question of law, which we review *de novo*. *Fontana*, 362 Ill. App. 3d at 510.

¶ 35 Here, the agreement contained the following fee-shifting provision:

> "Employee agrees that a breach of the obligations under Paragraphs 5 through 6, or any other material provision of this Agreement, may or will result in irreparable damage to the Company which could not be compensated by money damages alone. Accordingly, Employee agrees that should there be a breach of this Agreement, or a threatened breach, the Company shall be entitled to injunctive relief in addition to such other legal or equitable remedies as may be available at law or in equity, the parties having agreed that all remedies are cumulative and Employee will indemnify the Company for any and all expenses it incurs related to such breach or threatened breach, including but not limited to direct responsibility for all costs, expenses, expert witness and attorneys' fees."

Defendant maintains that the fee provision is "self limiting" because it applies only to breaches that "may or will result in irreparable damage to the Company which could not be compensated by money damages alone." Defendant's argument misinterprets the plain language of the provision.

¶ 36 The fee-shifting provision does not provide that only breaches of the obligations under paragraphs five or six will result in irreparable damages, but also breaches of "any other material

provision of this Agreement." The provision then obligates defendant to indemnify plaintiff for "any and all expenses it incurs related to such breach or threatened breach," including attorney fees. Thus, under the plain language of the provision, plaintiff is entitled to attorney fees resulting from defendant's breach of any "material provision" of the agreement. Defendant does not argue that the provision requiring him upon termination to remedy any negative balance in his commission bank account was not a "material provision" of the agreement. Therefore, we conclude that the trial court did not err in awarding plaintiff reasonable attorney fees resulting from defendant's breach of the agreement.

¶ 37 Defendant's reliance on *Negro Nest, LLC v. Mid-Northern Management, Inc.*, 362 Ill. App. 3d 640 (2005), is misplaced. Defendant cites *Negro Nest* for the rule that attorney fees are recoverable under a contractual fee-shifting provision only if the provision contains "precise language" justifying the award. The issue in *Negro Nest* was whether attorney fees were recoverable under a fee-shifting provision making the defendant liable for "all collection costs incurred" in the event of nonpayment. *Negro Nest*, 362 Ill. App. 3d at 641. The court noted that "Illinois courts have consistently refused to read attorney fees into imprecise language" and held that the imprecise phrase "all collection costs" was not sufficient to allow for recovery of attorney fees absence evidence of the parties' intent. *Negro Nest*, 362 Ill. App. 3d at 649-51. Here, imprecision of the contract language is not at issue, because the agreement's fee-shifting provision expressly provided that attorney fees were recoverable.

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 40 Affirmed.