2016 IL App (5th) 160185-U

NO. 5-16-0185

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

MELODYE LYNN PORTELL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 16-SC-499
	)	
JAMES Z. TAYLOR,	)	Honorable
	)	Donald M. Flack,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court is affirmed where: 1) the plaintiff was not required to file an answer to the defendant's counterclaim in a small claims action; and 2) the defendant failed to provide a full and complete record on appeal.

¶ 2 The defendant, James Z. Taylor, appeals from the circuit court's judgment in favor of the plaintiff, Melodye Lynn Portell, in the amount of $2,259.12 for damages resulting from an automobile accident, plus $98 in court costs. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3 FACTS

¶ 4 On February 8, 2016, the plaintiff, *pro se*, filed a one-page small claims form complaint in the circuit court of Madison County, claiming that the defendant was indebted to the plaintiff in the amount of $2,259.12 for damages resulting from an automobile accident. The defendant was then served with summons. The summons required him to appear for a hearing on March 30, 2016. Rather than appear for the scheduled hearing date, the defendant filed an answer denying the allegations of the plaintiff's complaint, an affirmative defense claiming that any property damage the plaintiff sustained was a result of her own negligence, and a counterclaim against the plaintiff, alleging that she struck his automobile causing property damage that did not exceed an amount of $1,500. The defendant filed his pleading on March 11, 2016.

¶ 5 The plaintiff did not file a responsive pleading to the defendant's affirmative defenses and the counterclaim. Instead, the matter was scheduled for a bench trial on April 6, 2016. There is no transcript of the proceeding, and the only evidence within the record regarding how the accident occurred is a copy of the police report. The report states that on March 22, 2015, the plaintiff's vehicle was in the inside lane on Collinsville Road in Collinsville, Illinois, waiting in traffic due to an event at Fairmount Park. The plaintiff claimed that traffic was moving slowly, and that she thought the defendant was letting her merge into his lane of traffic. The defendant allegedly sped up, and his driver's side mirror scraped the rear passenger quarter panel of plaintiff's car.

¶ 6 The record also contains a one-page form order that shows the plaintiff appeared for the hearing, *pro se*, and the defendant appeared with counsel. The order further

indicates that the circuit court considered the dispute on the merits, and entered judgment in favor of the plaintiff, and against the defendant, in the amount of $2,259.12 plus an additional $98 in court costs.

¶ 7 The defendant appeals from the circuit court's judgment finding in favor of the plaintiff.

¶ 8 LAW AND ANALYSIS

¶ 9 At the outset, we note that the defendant properly filed a common law record on appeal, but did not file a transcript of the proceedings, as there was no court reporter present during the bench trial. The defendant also did not file a bystander's report pursuant to Supreme Court Rule 323(c). Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005). Moreover, there is no agreed-to written statement of facts. Ill. S. Ct. R. 323(d) (eff. Dec. 13, 2005). The appellant bears the burden of preparing a full and complete record on appeal so that we have a sufficient basis for reviewing the decision of the trial court. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003). In the absence of a report or record on appeal, we presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Midstate Siding & Window Co.*, 204 Ill. 2d at 319. Any doubts in the record are to be resolved against the appellant. *Northern Illinois Gas Co. v. Murphy Excavating*, 212 Ill. App. 3d 486, 489 (1991). Finally, we will not reverse the judgment of the circuit court unless the trial court's judgment is clearly contrary to the manifest weight of the evidence. *Jackson v. Bowers*, 314 Ill. App. 3d 813, 818 (2000).

¶ 10 On appeal, the defendant argues that the trial court should have entered judgment in his favor because the plaintiff failed to answer the counterclaim. At the very least, the defendant requests that we remand this case with directions that the plaintiff file an answer to the defendant's counterclaim. Alternatively, the defendant contends that this cause should be remanded for a new hearing because the circuit court did not create a transcript of the hearing, and did not explain the basis of its decision in accordance with Supreme Court Rule 286(b) (Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992)). Finally, the defendant maintains that the trial court's decision was against the manifest weight of the evidence. We begin our review with the defendant's first contention of error.

¶ 11 The defendant claims that the trial court should have entered judgment in his favor because the plaintiff failed to file an answer to the counterclaim in accordance with section 2-608(d) of the Code of Civil Procedure (Code) (735 ILCS 5/2-608(d) (West 2014)). It is the defendant's position that section 2-608(d) of the Code applies to this case because the Supreme Court Rules for small claims procedures do not explicitly preclude a defendant from filing affirmative defenses and a counterclaim with the answer.

¶ 12 The defendant's argument lacks merit as the plaintiff was not required to file an answer to the defendant's counterclaim. See *Demos v. Haber*, 101 Ill. App. 3d 901, 902 (1981) (stating that under Supreme Court Rule 286, plaintiff was not required to file an answer to the counterclaim); see also *Peoria Housing Authority v. Roberson*, 74 Ill. App. 3d 326, 328-29 (1979) (noting that a responsive pleading to an affirmative defense is not mandated in a small claims action because the trial judge is vested with a great deal of discretion with regard to the ordering of pleadings). Here, there is nothing in the record to

suggest that the trial court ordered the plaintiff to file an answer to the defendant's counterclaim. As a result, the plaintiff was not required to file a responsive pleading to the defendant's counterclaim. Furthermore, under Supreme Court Rule 286, the plaintiff's appearance at the hearing served as a denial to all of the defendant's allegations, and any defense was available to the plaintiff as if specifically pleaded. See Ill. S. Ct. R. 286(a) (eff. Aug. 1, 1992); see also *Demos*, 101 Ill. App. 3d at 902. Accordingly, we reject the defendant's first contention of error.

¶ 13 The defendant's next argument is that this cause should be remanded for a new hearing because the circuit court did not create a transcript of the proceedings, and did not explain the basis of its decision in accordance with Supreme Court Rule 286(b) (Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992)). This argument is also without merit as the defendant entirely overlooks his responsibility as the appellant to provide this court with a full and complete record on appeal. While it is true that no transcript of the proceedings is available, the defendant failed to present this court with an acceptable alternative report of proceedings. Ill. S. Ct. R. 323(a), (c), (d) (eff. Dec. 13, 2005). Any argument proffered by the defendant regarding the circuit court's noncompliance with the small claims rules of procedure during the bench trial cannot be substantiated as we are without a sufficiently complete record of the proceeding. The appellant's duty to present an adequate record on appeal is not alleviated because the case was a small claims action, and any doubt in the record is resolved against the appellant. *Northern Illinois Gas Co.*, 212 Ill. App. 3d at 489. Based upon the scant record before us, we are left with no choice but to presume that the order entered by the trial was in conformity with the law and had

an adequate factual basis. Accordingly, we reject defendant's second contention of error on appeal. Similarly, because we are without a proper record on appeal, we cannot review the defendant's final argument, that the circuit court's judgment was against the manifest weight of the evidence. Therefore, the judgment of the circuit court is affirmed.

¶ 14 CONCLUSION

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County.

¶ 16 Affirmed.