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2013 IL App (3d) 120093-U

Order filed June 21, 2013

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

JOHN P. RIDGE,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellant,)	Henry County, Illinois,
)	
v.)	Appeal No. 3-12-0093
)	Circuit No. 97-L-180
ROBERT J. MONTAGUE and)	
JANICE L. MONTAGUE,)	
)	Honorable Kendall O. Wenzelman,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly considered those requests to admit deemed admitted by operation of Illinois Supreme Court Rule 216 as judicial admissions, and did not abuse its discretion in considering other evidence when reaching its determination on the merits. Affirmed.

¶ 2 Plaintiff, John Ridge, filed a complaint in Kankakee County circuit court following his purchase of residential real estate from defendants, Robert and Janice Montague. At the conclusion of the plaintiff's case-in-chief at jury trial, defendants moved for a directed verdict on

three counts, and a directed finding on the remaining fourth count. The trial court granted defendants' motion; plaintiff appealed.

¶ 3 This court deemed certain requests for admissions admitted due to defendants' failure to reply to the requests in a timely fashion, and remanded the case back to the trial court on three counts. Upon remand, plaintiff stipulated to a bench trial before the trial judge, who previously directed the verdict against him.

¶ 4 Following the bench trial, the trial court, again, ruled for defendants, finding that plaintiff failed to prove the necessary elements to find defendants liable for common law fraud and deceit. The trial court similarly found that plaintiff had failed to prove the necessary elements for his claims under the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2010)) and the Residential Real Property Disclosure Act (765 ILCS 77/1 *et seq.* (West 2010)).

¶ 5 Plaintiff appeals, claiming that the requests for admissions deemed admitted by this court should have been treated by the trial court as judicial admissions, not evidentiary admissions. As such, the admissions were unequivocal and conclusive and, on their own, established the defendants' knowledge of the defects in the subject property.

¶ 6 We affirm.

¶ 7 BACKGROUND

¶ 8 I. Procedural History

¶ 9 Plaintiff, John Ridge, initiated this action on December 16, 1997. His original complaint alleged fraudulent concealment, violation of the Consumer Fraud and Protection Act and violation of the Residential Real Property Disclosure Act regarding the property located at 777 N.

Kennedy Drive, Kankakee, Illinois.

¶ 10 On October 16, 1997, the defendants/sellers, Robert and Janice Montague, executed a real estate contract with plaintiff. The contract called for a purchase price of \$50,000 with the plaintiff to pay \$15,000 prior to closing and the remaining \$35,000 balance to be paid in monthly installments of \$256.82 until November 1, 2000, at which time any unpaid principal or interest would become due and payable. The defendants contemporaneously executed a residential real property disclosure report, indicating they were not aware of any structural defects and/or potentially dangerous conditions, including flooding or recurring leakage problems in the basement; material defects in the basement or foundation; leaks or material defects in the roof, ceilings or chimney; material defects in the wall or floors; and material defects in the electrical system.

¶ 11 The matter first proceeded to a jury trial on September 8, 2004, wherein the plaintiff asserted four claims against defendants: fraud and deceit (count I); violations of the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (count III); breach of warranty (count IV); and violations of the Residential Real Property Disclosure Act (the Act) (count V). At the close of plaintiff's case, the trial court granted defendants' oral motions for directed verdicts on counts I, IV, and V and a directed finding on count III. Plaintiff appealed, and this court affirmed in part, reversed in part, and remanded for further proceedings.

¶ 12 Specifically, this court deemed the factual statements in plaintiff's request to admit facts admitted pursuant to Illinois Supreme Court Rule 216 (eff. May 1, 2013). The court also found that a directed verdict on count I was improper, as the record contained evidence to support plaintiff's claim that defendants concealed defects in the building and that plaintiff detrimentally

relied on those misrepresentations. The directed verdict on count V was also deemed improper, where the trial court ruled, as a matter of law, that plaintiff could not prevail because the building did not qualify as residential under local zoning regulations. This court held that the property was zoned residential at the time of the sale, and defendants presented no authority for the proposition that local zoning ordinances controlled whether the Act applies to given transactions. As to the directed finding on count III, this court found that plaintiff had made out a *prima facie* case under the Consumer Fraud Act. In finding the directed finding improper and remanding count III for further proceedings, this court also stated that the factual statements in plaintiff's request to admit that were deemed admitted obviously affected the body of evidence available for weighing, and that the trial court must consider all proper evidence before a decision could be rendered on the motion for a directed finding.

¶ 13 On remand, the parties agreed to a bench trial. In order to conserve time and expense, the parties also stipulated that the evidence at trial would consist solely of the evidence of record, the entire transcript from the previous trial, all exhibits entered into evidence at the previous trial, all party admissions and the opinion testimony of plaintiff as to the value of the subject property prior to repair. Following the bench trial, the trial court, again, found in favor of defendants and issued a written memorandum on September 6, 2011. While the trial court found that evidence was clear that the property plaintiff purchased from defendants had several structural deficiencies, plaintiff failed to prove by clear and convincing evidence that defendants had any knowledge of the existence of the defects at the time the property was sold to plaintiff, even when considering the factual admissions on remand.

¶ 14

II. Condition and Use of the Property

¶ 15 Plaintiff summarized defendants' use of the building, the requests for admissions, and structural defects in the property within his brief as follows. We note that defendants did not file a brief.

¶ 16 The defendants owned the property, known as the Kennedy building, for approximately 22 years, from 1975 to 1997. Robert Montague had his office there from 1975 through 1982. From 1982 through 1987, a telephone company called Superior Systems rented the property.

¶ 17 Defendants sold the building on contract to Judith Frechette in October 1987 for \$24,900. Frechette rented the property both as a place for her alteration shop and a residence.

¶ 18 Frechette conducted her own inspection and noted that the property was in bad shape. During her time there, she encountered a number of structural problems. The walls of the foundation leaked and water went down the west wall, the basement flooded, the windows and roof were bad, and the outside of the building appeared to be crumbling. She asked defendants to pay for one-half the expense of installing a new roof; defendants refused. Montague and his son did come out to the property on a couple of occasions and tried to patch the roof, but it did not correct the problem. According to Montague, he did not know if there were leaks or cracks in the edges of the roof near where it met with the walls. Montague testified to having the roof repaired at a cost of \$1,500.

¶ 19 Frechette also installed new windows, as the old windows had rotted. She, again, requested that defendants repair the windows, but they refused. While the windows were being repaired, Frechette saw the rotted condition of the interior walls and reported this to defendants. The outside of the property was in a similar state of disrepair; Frechette testified to being able to touch the outside stucco and it would crumble beneath her hands. During her tenancy, Frechette

also experienced problems with the electrical system. The circuit breakers would trip when she was operating her sewing machines for her business. Frechette testified to reporting all of these problems to defendants, including the profuse leaking and flooding occurring on the property.

¶ 20 In 1995, by foreclosure on the contract for deed agreement, the Montagues regained possession of the property from Frechette.

¶ 21 Following Frechette's departure, defendants made a number of cosmetic repairs to the property totaling approximately \$1,300. In 1997, defendants spent another \$250 for minor repairs, including repairing the ceiling over the rear entrance and repairing the front porch. Montague had installed one drop ceiling, and Frechette had installed another. Defendants also patched cracks in the outside stucco.

¶ 22 In 1995, defendants requested that Maynard Peters, a painting contractor, take a look at the building so he could make some repairs and improve the building. Upon his arrival, Peters saw that the condition of the building was "pretty rough." He testified that "if it wasn't cleaned up, it would be condemned."

¶ 23 Peters was hired to paint the building's exterior. He testified to using masonry paint, which is paint with concrete mixed in that hardens after application. Peters used approximately 40 to 50 gallons of masonry paint, which the defendants supplied.

¶ 24 In 1996, defendants retained River Valley Realty to sell the building. The defendants' agent was Nickey McClintock. The listing for the home stated that it was being sold with living quarters, and the defendants accordingly signed a residential real property disclosure report. Defendants also signed the articles of agreement, which stated that nothing impaired the property's use as either a residential or commercial property.

¶ 25 When plaintiff first inquired about the building, McClintock faxed him the multiple listing sheet and the real property disclosure report. The property was listed as residential on the top of the multiple listing sheet form. She explained to plaintiff that the building was 45 years old and the previous occupant ran a business in the front and lived in the rear.

¶ 26 A week after this initial meeting with McClintock, plaintiff arranged to see the property again with Donald Kroll, a carpenter enlisted to help plaintiff assess the condition of the property. Plaintiff and Kroll met with McClintock and walked around the outside of the building, where they noticed cracks on the southwest corner. Plaintiff asked McClintock to check with the owner to see whether this area of the stucco exterior was made of cinder block or wood.

¶ 27 Once inside, Kroll removed some drop ceiling tiles to inspect for water damage and noticed a few water spots. Plaintiff asked McClintock if there had been a problem with the roof. She stated that she would have to check with the owner and get back to plaintiff with the information. Kroll also noticed an unusual number of supports in the basement. The agent, again, said she would have to ask defendants and get back to plaintiff. McClintock later responded that the supports were installed by the telephone company, the tenant before Frechette. During the visit, plaintiff specifically asked McClintock to ask defendants if there were problems with water coming through the stucco. He requested that McClintock ask defendants when the last time work had been done on the roof. In getting back to plaintiff, McClintock stated that roof work had been done in the last couple of years.

¶ 28 Plaintiff testified that he used the answers given by defendants' listing agent, the multiple listing sheet form, and real property disclosure report, his inspection of the property and

defendants' answers at closing in deciding to purchase the property.

¶ 29 Plaintiff ultimately made an offer of \$50,000, with \$15,000 down and the balance of \$35,000 to be paid over five years. Plaintiff, defendants, and McClintock were all present at the closing. Before it began, plaintiff asked defendants about the roof and the basement. Mr. Montague responded by saying that he should not have any problems with the roof if he keeps the gutters clean. As for the basement, he replied that he had stored things down there at one point and, like all basements, it gets damp.

¶ 30 Upon closing, plaintiff took possession and immediately made efforts to make some minor repairs, including removing a drywall partition and the dropped ceiling in the front of the building. Plaintiff again employed Kroll, who after removing the dropped ceiling discovered three more dropped ceilings. Once those were removed, Kroll discovered that the main support beam, which holds up the roof for the entire building, was cracked. He installed a temporary support and notified plaintiff about the support beam. Kroll stated that if the beam cracked completely, the roof would collapse into the building.

¶ 31 Kroll removed the pine paneling on the north and south walls in the front of the building, only to find that approximately 80% of the support wall behind the paneling was crumbling. Kroll testified that water had leaked from the roof to the inside of the building.

¶ 32 Plaintiff hired carpenters Bobby Ferrias and Jim Schultz to do repair work after discovering all the problems with the building. They repaired the cracked beam in the ceiling. They removed the fireplace on the north side of the building in the main room and found that all the studs behind it were rotting. The only thing holding the building up was stucco. They installed temporary walls. Ferrias and Schultz testified that the studs were so bad that one could

puncture them with a finger. The two carpenters removed the rest of the pine paneling left by Kroll, only to discover that everything behind the paneling was rotted out as well. The remaining structure was so weak that studs could be pulled out by hand. Framing around the windows was rotted and water was coming in. The roof and rafters were all rotted out, and the wood was saturated with mildew. Ferrias and Schultz were afraid to remove anything else for fear that the building might collapse.

¶ 33 Ferrias and Schultz continued to make repairs, replacing beams and framing all around the building. They removed the stucco from the exterior and replaced it with vinyl siding. Schutlz had to build another wall in the basement to accommodate the fact that the beams were rotted away from the wall to the point they were missing the existing wall.

¶ 34 Wayne Wishhover, a union electrician and owner of his own business, testified that the upstairs electrical system was obsolete. The garage was powered by an unprotected overhead line. He found new wiring mixed with old wiring, which goes against code. The circuit box had been replaced, but the wiring upstairs was still the old knob and tube wiring, which has not been used within the industry in more than 50 years. The system was unsafe and could have caused a fire. Wishhover received a permit and installed a modern electrical system.

¶ 35 Randy Halsne, a roofer and president of his own construction company, was called in by plaintiff to assess the roof damage and make repairs. Halsne cut a hole in the roof to see how many layers of roof had been installed over the years. He found seven or eight layers of roof. He testified that the depth from the top to the bottom layer was six to seven inches. The old roof on the bottom was done using a method now obsolete in the industry. Following the inspection, Halsne submitted a proposal for a new roof. This proposal required all layers of roofing be torn

away down to the deck, replacing the wood, laying down insulation and installing a new rubber roof.

¶ 36 Once construction on the roof commenced, Halsne found that the exterior walls were all rotted away and had to be rebuilt. He found leaking along the walls of the building. The crew removed roughly 12 tons of roofing and roofing material from the deck. In Halsne's opinion, the weight of the roof caused the main support beam of the structure to crack.

¶ 37 Plaintiff hired a construction crew for the reconstruction/repair work for the building. Total cash disbursements for the work on the building totaled \$66,545.01. Kennard Thomas, a general contractor, visited the site both before the reconstruction and during. Thomas testified that it was about a 65% rebuild and, in his opinion, \$66,545.01 was a reasonable figure. He testified that the work done was not lavish or extravagant; it just made the building functional. The repairs took over two months to complete and, during that time, plaintiff continued to pay \$500 per month for rent at his old office building.

¶ 38 There was also testimony elicited from Clifford Cross, Kankakee's city planner. Cross was responsible for enforcing the city zoning ordinance. After reviewing the records for 777 N. Kennedy Drive, he determined that the current zoning is neighborhood/commercial. Two uses could have been allowed in 1997. Cross stated that it could continue to be used as a residence in 1997 as long as there had been no change in that use, or it did not remain vacant for a period exceeding 12 months. Cross testified that there was no evidence of an illegal use of the property.

¶ 39 Both Robert and Janice Montague testified. As defendants did not file a brief and both parties are aware of the underlying facts of their case, we will summarize their trial testimony.

¶ 40 At the time the residential real estate disclosure report was signed, neither Bob nor Janice

were aware of any structural defects on the property. Bob made no affirmations to plaintiff about the condition of the property prior to the closing. In fact, Bob testified that the first time he met plaintiff was at closing, when plaintiff brought the contracts he had drafted himself for defendants to sign. Bob testified that after repossessing the building from Frechette in 1994, he had to paint the basement three times in order to cover up the smell left by Frechette's animals. When asked by plaintiff's counsel if he used waterproof paint to prevent further leaking in the basement, Montague responded in the negative, and that he used waterproof paint because "it was a basement and that's what they said to use." In response to additional questioning regarding repairs made to the exterior of the property, Mr. Montague testified that he patched the stucco once because he saw "hairline cracks," but he never recalled patching any holes. There were a few places where the stucco flaked, but he did not know how deep they were. As for the time frame, Mr. Montague indicated that the stucco patching was done sometime after Frechette moved out in 1994, as they were trying to clean the property up to sell. Mr. Montague also stated that he painted the exterior of the property to make it cleaner and brighter.

¶ 41 Janice Montague testified that Frechette made a number of repairs to the building while Frechette owned the building, both cosmetic and substantive. Frechette put in new windows and replaced the roof. Mrs. Montague testified that Frechette had encountered trouble with the roof in the beginning. Her husband and son attempted to fix it because it was a flat roof. Eventually, Frechette told the Montagues that she had taken care of the problem and replaced the roof. Like her husband's, Mrs. Montague's testimony revolved primarily around those repairs and maintenance required to ready the property for sale.

¶ 42

ANALYSIS

¶ 43 Plaintiff contends that it was error for the trial court to consider the requests to admit, as deemed admitted by this court, as evidentiary admissions as opposed to judicial admissions once the case was remanded. We find it important to note at the outset that this is the plaintiff's only argument in this regard, *i.e.*, plaintiff does not argue that the trial court's ultimate determination was against the manifest weight of the evidence. Rather, plaintiff's appeal focuses solely on the requests to admit that were deemed admitted by operation of Illinois Supreme Court Rule 216 (eff. May 1, 2013). The plaintiff argues that had the trial court considered these, and only these, it would prove that defendants had "unequivocal knowledge" of the existence of defects at the time of sale.

¶ 44 "A judicial admission is a deliberate, clear, unequivocal statement of a party, about a concrete fact, within the party's peculiar knowledge." *Rath v. Carbondale Nursing & Rehabilitation Center, Inc.*, 374 Ill. App. 3d 536, 538 (2007) (quoting *Wausau Insurance Co. v. All Chicagoland Moving & Storage Co.*, 333 Ill. App. 3d 1116, 1122 (2002)). Judicial admissions are binding upon the party making them and may not be controverted. *Wausau*, 333 Ill. App. 3d at 1122. By contrast, ordinary evidentiary admissions may be contradicted or explained by the party. *Elliot v. Industrial Com'n of Illinois*, 303 Ill. App. 3d 185, 187 (1999) (citing M. Graham, Cleary & Graham's Handbook of Illinois Evidence § 802.11, at 616 (5th ed. 1990)). "A judicial admission is the highest and best type of evidence which dispenses with the need for proof of the facts submitted." *Burns v. Michelotti*, 237 Ill. App. 3d 923, 932 (1992) (citing *O'Neill v. Chicago Transit Authority*, 5 Ill. App. 3d 69 (1972)). "A party cannot create a factual dispute by contradicting a previously made judicial admission." *Burns*, 237 Ill. 3d at 932 (citing *Hansen v. Ruby Construction Co.*, 155 Ill. App. 3d 475, 480 (1987)).

¶ 45 Where a party fails to properly respond to a Rule 216 request to admit facts, those factual matters in the request are deemed judicial admissions, which cannot later be controverted by any contrary evidence. *Robertson v. Sky Chefs, Inc.*, 344 Ill. App. 3d 196, 199 (2003). However, " 'if the request seeks the admission of a conclusion of law, the request is improper in form and the opposing party's failure to respond does not result in an admission.' " *Moy v. Ng*, 371 Ill. App. 3d 957, 961 (2007) (quoting *Banco Popular v. Beneficial Systems, Inc.*, 335 Ill. App. 3d 196, 209 (2002)).

¶ 46 "[A] trial court may exclude evidence on an issue which has been judicially admitted because: (1) the evidence is no longer relevant to the issues remaining in the case; (2) the evidence may be superfluous and confusing; and (3) the other party may not necessarily be entitled to the additional dramatic force of the evidence ***." *Davis v. International Harvester Co.*, 167 Ill. App. 3d 814, 824 (1998) (citing 9 Wigmore, Evidence § 2591, at 824 (Chadbourn rev. ed. 1981)). "The rule, however, is not absolute. A trial court is afforded discretion in evidentiary rulings, and its decision will be not be disturbed absent an abuse of that discretion." *Rath*, 374 Ill. App. 3d at 539 (citing *Stallings v. Black & Decker (U.S.), Inc.*, 342 Ill. App. 3d 676, 683 (2003)). As stated in Wigmore's treatise:

"Nevertheless, a colorless admission by the opponent may sometimes have the effect of depriving the party of the legitimate *moral force of his evidence*; furthermore, a judicial admission may be cleverly made with grudging limitations or evasions or insinuations (especially in criminal cases), so as to be technically but not practically a waiver of proof. Hence, there should be no absolute rule on the subject;

and the trial court's discretion should determine whether a particular admission is so plenary as to render the first party's evidence wholly needless under the circumstances." (Emphasis in original.) 9 J. Wigmore, Evidence § 2591 at 824-25 (Chadbourn rev. ed. 1981).

¶ 47 Here, we agree with plaintiff that the Rule 216 requests to admit, once deemed admitted by this court, functioned as judicial admissions. However, in light of the nature and scope of the admissions, we cannot say the trial court abused its discretion in considering additional evidence. Indeed, prior to the bench trial on remand, the parties stipulated that the only evidence to be considered by the trial court in making its determinations was the testimony and exhibits admitted at the original trial, the admissions of the parties, and the opinion of the plaintiff as to the value of the property in question.

¶ 48 There were a total of 42 requests that were deemed admitted. The most pertinent to this appeal are as follows:

"7. The cracks in the stucco exterior allowed water to enter the building at 777 N. Kennedy Drive, Kankakee, Illinois over many years rotting out its foundation and framing.

9. Robert Montague applied cement or plaster to the basement walls at 777 N. Kennedy Drive, Kankakee, Illinois to cover cracks and holes in the wall.

13. Robert Montague was told that water entered the building at 777 N. Kennedy Drive, Kankakee, Illinois when it rained.

14. Robert Montague put a new roof on the building at 777 N. Kennedy Drive, Kankakee, Illinois without removing the old roofs.

15. The electrical wiring in the building at 777 N. Kennedy Drive, Kankakee, Illinois caused fires that charred the wood structure adjacent to wires.

16. During the time the Montagues owned the building there were four roofs placed on the building at 777 N. Kennedy Drive, Kankakee, Illinois, one on top of the other.

17. Robert Montague patched the roof every year or two, while he owned the building at 777 N. Kennedy Drive, Kankakee, Illinois because it leaked."

Request Nos. 21 through 42 all deal with certain amounts of money that were paid by defendants to Maynard Peters for various repairs on the building that included painting, plywood underlay, and linoleum installation. Nowhere did defendants admit that they knew of the structural deficiencies.

¶ 49 The trial court found, "[i]t is clear from the evidence that the building that plaintiff purchased from defendants had several structural deficiencies. However, the court finds that plaintiff has failed to prove by clear and convincing evidence that defendants had any knowledge of the existence of the difficulties at the time the property was sold to plaintiff."

¶ 50 The trial court went on to state, "[f]urther, it is the finding of this court that even with all of the requests to admit facts being deemed admitted, those admissions failed to prove knowledge on the part of defendants as to the existence of defects at the time of the sale of the property to plaintiff."

¶ 51 We find *Rath v. Carbondale Nursing & Rehabilitation Center, Inc.*, 374 Ill. App. 3d 536 (2007), illustrative. In *Rath*, a defendant nursing home "admitted numerous negligent acts" in response to plaintiff's requests to admit. *Id.* at 537. The trial court noted, however, that while

admitting to engaging in certain negligent, defendant "flatly denied both direct and proximate cause." *Id.* at 540. Thus, "[d]espite the admission of negligent conduct, a discussion of the care rendered to [plaintiff] was still necessary to determine the merits of the plaintiff's claim. In other words, the admissions were limited in scope." *Id.* at 539. The *Rath* court therefore held that despite the admission of certain negligent acts, the "trial court did not abuse its discretion by allowing testimony describing the treatment of [the plaintiff]." *Id.* at 542.

¶ 52 So while in the instant case, the facts are deemed admitted by operation of Rule 216, admission of those facts did not preclude the parties from discussing what effect the facts have on the ultimate issues of litigation. We find, as the *Rath* court did, that "[a] categorical description of the admissions as judicial does not resolve the issue at hand." *Id.* at 539. The trial court did not abuse its discretion in evaluating additional evidence contemporaneously with the Rule 216 admissions.

¶ 53 Finally, we, like the trial court, do not believe that the admissions, when taken on their own, unequivocally prove that defendants had knowledge of the defects and concealed the same.

¶ 54 Request No. 17, for example, states that "Robert Montague patched the roof every year or two while he owned the building *** because it leaked." In its order, the trial court questioned whether this admission meant that defendants patched the roof every year or two because it was always leaking, or that because it had once leaked, it was their normal practice to perform routine maintenance on the roof every year or two. Many of the other requests outlined above evince the same response—none decisively establish that defendants knew the defects were present at the time the property was sold to plaintiff.

¶ 55 The trial court correctly points out that some of plaintiff's own witnesses testified to the

fact that the major deficiencies of which plaintiff had complained were not capable of being discovered until such time as workers, hired by plaintiff, initiated remodeling of the building. The trial court further found having read the admissions contemporaneously with other evidence presented, that the acts alleged by plaintiff to have constituted concealment of a defect are equally consistent with acts of proper and routine maintenance of the premises. Any testimony to the contrary the trial court found unconvincing.

¶ 56 "The trial judge, as the trier of fact, is in a position superior to a reviewing court to observe witnesses while testifying, to judge their credibility, and to determine the weight their testimony should receive." *Bazydlo v. Volant*, 164 Ill. 2d 207, 214-15 (1995). We review a trial court's ruling following a bench trial to determine whether the trial court's judgment is against the manifest weight of the evidence. *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151, 154 (2001). "A judgment is against the manifest weight of the evidence when an opposite conclusion is apparent, or when findings appear to be unreasonable, arbitrary or not based upon the evidence." *Rhodes v. Illinois Central Gulf R.R.*, 172 Ill. 2d 213, 242 (1996).

¶ 57 Based on the record before us, we cannot say that the trial court's finding was against the manifest weight of the evidence.

¶ 58 CONCLUSION

¶ 59 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 60 Affirmed.