

findings and must presume that the trial court acted and ruled properly. This court affirms the judgment of the trial court.

¶ 3

BACKGROUND

¶ 4 The record on appeal consists of a 24-page common law record and a small envelope containing three exhibits. Nothing else is included in the record. Here follows all that this court can glean from the meager record.

¶ 5 On July 26, 2012, the plaintiff, Marshall Bailey, doing business as Bailey's Automotive and Boat Repair, filed a "small claim complaint" against the defendant, Anthony J. Grason. The plaintiff claimed that the defendant was indebted to the plaintiff in the sum of \$250 plus costs for "services." Attached to the complaint was an "auto repair order" dated November 22, 2010, which bore the name Anthony J. Grason and showed a total bill of \$250.

¶ 6 On July 30, 2012, the defendant filed an answer and counterclaim. Essentially, the defendant claimed that the plaintiff agreed to replace the engine in the defendant's boat for \$850, but subsequently told the defendant that he needed to perform far more work than originally anticipated and that the total bill would be \$3,600. At that point, the defendant told the plaintiff to stop work on the boat. The plaintiff told the defendant that he would retain possession of the defendant's boat until the defendant paid him \$600 for services rendered, which the defendant refused to pay. The defendant sought damages of \$4,500, which was the alleged value of the boat and its trailer, plus court costs, "related fee(s) and expenses," and unspecified "punitive and or statutory damages."

¶ 7 On September 13, 2012, the defendant filed a "notice of witnesses" listing himself and three other people as witnesses who would be called to testify at trial.

¶ 8 The record sheet indicates that on February 5, 2013, the case was tried by the circuit court without a jury. The record sheet entry for that date states that the plaintiff testified, three plaintiff's exhibits were admitted into evidence, the defendant testified, and the court

ruled in favor of the plaintiff for \$250 plus court costs and denied the defendant's counterclaim. Two sets of initials appear in the "judge and reporter" column of this docket sheet entry, suggesting that a court reporter was present for the trial. However, the record on appeal does not include a transcript of the trial. The three exhibits are included in the record. The exhibits are: (1) an "auto repair order" dated July 1, 2010, and marked "Petitioner's Exhibit 1", (2) an "auto repair order" dated November 22, 2010, and marked "Exhibit 2", and (3) a photograph marked "Petitioner's Exhibit 3." The subject matter of the photograph is not indicated, but it certainly could depict a part of a boat.

¶ 9 On March 6, 2013, the defendant filed a notice of appeal, thus perfecting the instant appeal.

¶ 10 Proceeding *pro se*, the defendant has filed a brief in this court. The plaintiff has not filed a brief. In his brief, the defendant asserts that the judgment of the circuit court is "against the manifest weight of the evidence." The main thrust of the argument is that the plaintiff and the defendant formed a contract concerning repair of the defendant's boat, and the plaintiff breached that contract. The brief is not a model of clarity, but apparently the defendant is arguing that the trial court weighed the evidence badly and therefore reached wrong conclusions. The defendant repeatedly refers to specific pages and lines in the "transcript." Attached to the brief are various documents, including three sheets of paper that appear to be pages from a transcript (specifically, pages 20, 38, and 39). As previously mentioned, though, no transcript is included in the record on appeal.

¶ 11

ANALYSIS

¶ 12 As noted above, the plaintiff has not filed an appellee's brief. Because the claimed error can be decided without the aid of an appellee's brief, this court will decide the appeal on its merits. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 13 From the scant record on appeal, it appears that this case was tried by the circuit court without a jury, each party presented his version of the facts, and the court found the plaintiff's version more credible. "Where the trial court sits without a jury, its findings of fact will not be disturbed unless they are against the manifest weight of the evidence." *Harris Trust & Savings Bank v. Village of Barrington Hills*, 133 Ill. 2d 146, 157 (1989). "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." *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995). The manifest weight of the evidence standard affords great deference to the trial court, in recognition of the trial court's superior position to determine and weigh the credibility of the witnesses, observe witnesses' demeanor, and resolve conflicts in their testimony. *People v. Jones*, 215 Ill. 2d 261, 268 (2005).

¶ 14 The defendant essentially argues that the trial court drew the wrong conclusions from the evidence presented at trial. However, given the slim record on appeal, this court has no way of knowing what the evidence was, and therefore cannot truly evaluate the trial court's conclusions. In order to conduct a thorough review of the judgment in this case, and truly evaluate the court's conclusions, this court would need to examine a transcript of the trial, or a bystander's report or an agreed statement of facts. Supreme Court Rule 323 (eff. Dec. 13, 2005) mandates that the record on appeal contain a report of the trial-court proceedings, which includes a transcript, or, if no transcript is available, a bystander's report or an agreed statement of facts. The appellant has the burden of providing a complete record. *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 16. Here, the defendant as appellant had the burden of providing this court with a transcript of the trial, or an appropriate alternative, but he failed to meet that burden. Neither a transcript nor an alternative has been provided.

¶ 15 Where the appellant fails to include in the record on appeal some component that is key to his argument, the absence of that component supports a decision adverse to the

appellant on that issue. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). See also *People v. James*, 337 Ill. App. 3d 532, 533 (2003) (when the record on appeal is incomplete, a reviewing court "must construe any omission in favor of the judgment rendered by the court below"). Accordingly, this court must presume that the trial court acted and ruled correctly, and that its findings were not against the manifest weight of the evidence.

¶ 16 In his brief, the defendant makes many assertions of the evidence, but these cannot substitute for a transcript. See *In re Marriage of Holem*, 153 Ill. App. 3d 1095, 1100 (1987) ("Assertions of the evidence in an appellant's brief *** cannot serve as a substitute for a report of the proceedings."). The defendant also appended to his brief purported pages from the trial transcript. However, "[a]ttachments to briefs not included in the record are not properly before the reviewing court and cannot be used to supplement the record." *Zimmer v. Melendez*, 222 Ill. App. 3d 390, 394-95 (1991). Although the defendant may have procured a proper transcript of the trial, he did not include it in the record on appeal. Under the law, this court has no permissible choice except to affirm the judgment of the circuit court.

¶ 17 Affirmed.