

No. 1-13-2991

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PATRICIA GOODMAN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 12 M1 168907
)	
EXPEDIENCE HEATING & COOLING,)	
JAMES FLOYD,)	Honorable
)	Anthony L. Burrell,
Defendants-Appellees.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

O R D E R

¶ 1 *Held:* Where the record is not sufficient to review the trial court's judgment in favor of defendant, we must presume that the trial court's finding was sufficiently supported by the evidence; the trial court's judgment was affirmed.

¶ 2 Following a bench trial, plaintiff Patricia Goodman appeals, *pro se*, from the judgment in her breach of contract action in favor of defendant James Floyd d/b/a Expedience Heating & Cooling. Plaintiff contends the trial court abused its discretion in finding against her because the court denied her the opportunity to prove her case and failed to make findings on essential elements of the claim. Although defendant has not filed a brief on appeal, we may proceed

under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) ("[I]f the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal"). We affirm.

¶ 3 On November 20, 2012, plaintiff filed a complaint alleging that she paid defendant \$2,000 for a central air conditioning system. The unit did not work properly, and when defendant finally returned her many calls, he promised to return to determine what was wrong. Defendant never returned and plaintiff, her elderly mother, and her aunt had to endure excessive heat without air conditioning. Plaintiff later called Sears to inspect the unit, which was leaking water and flooding her basement. Plaintiff paid Sears to replace the unit with a larger one.

¶ 4 On July 25, 2013, the trial entered an *ex parte* judgment for plaintiff and against defendant in the amount of \$2,000 because defendant did not appear in court after being notified of the hearing by mail. (The record does not contain any return of service on defendant pursuant to Illinois Supreme Court Rule 284 (eff. April 11, 2001)). On August 6, 2013, defendant filed a motion representing that he never received a notice to appear in court and on August 16, 2013, the trial court vacated the judgment. Defendant submitted to the court's jurisdiction.

¶ 5 Trial was held on August 23, 2013. No transcript from the trial is contained in the record, and plaintiff acknowledges in her brief that no court reporter was present. Following trial, the court entered judgment for defendant. On September 5, 2013, plaintiff filed a motion to vacate the judgment, which the court struck as improper (for reasons not reflected in the record). On September 17, 2013, plaintiff filed a timely notice of appeal.

¶ 6 On appeal, plaintiff contends that the trial court abused its discretion in entering judgment in defendant's favor. In particular, plaintiff maintains that the court failed to make necessary

findings, refused to consider relevant evidence, and "wasn't interested in looking at the written contract[.]"

¶ 7 While we sympathize with plaintiff's frustration, as a court of review we are bound to consider only matters appearing in the record on appeal and we are unable to reach the merits of this appeal because of the insufficiency of the record. "[I]t is the appellant's duty to present the court with a proper record on appeal, so that the court has an adequate basis for reviewing the decision below. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). When there is a gap in the record that could have a material impact on the outcome of the case, the reviewing court will presume that the missing evidence supported the judgment of the trial court and resolve any doubts against the appellant." *Cambridge Engineering v. Mercury Partners*, 378 Ill. App. 3d 437, 445-46 (2007). "Without an adequate record preserving the claimed error, the reviewing court must presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law." *Corral*, 217 Ill. at 156-57; *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 8 When a case is resolved after a bench trial, we will not reverse the resulting judgment unless it is against the manifest weight of the evidence. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise, Ltd., USA*, 384 Ill. App. 3d 849, 859 (2008). Where the record lacks the evidence presented at trial, it is impossible for us to determine that the judgment entered was contrary to the manifest weight of that evidence.

¶ 9 The common law record in this case shows that a bench trial was held on August 23, 2013, after which the trial court entered judgment in favor of defendant. As we have noted, there is no transcript of the trial (Ill. S. Ct. R. 323(a) (eff. Dec. 13, 2005)) or an acceptable alternative (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)) to reflect the evidence presented at trial or the trial

court's conduct that plaintiff wishes us to consider on appeal. See *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993) ("[T]he record does not reflect what evidence the trial court heard concerning the plaintiffs' and defendant's contentions. In the absence of such a record, we must presume the trial court had ample grounds supporting its determination."). We recognize that informal hearings in small claims cases are permissible (Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992)), but in the absence of an adequate record, we are unable to address any of the issues plaintiff raises.

¶ 10 Plaintiff has included in an appendix to her brief what we assume are documents she either presented or attempted to present to the trial court during trial. We cannot consider these materials either as they are not included in the record on appeal. Inclusion of evidence in an appendix is an improper supplementation of the record. *People v. Wright*, 2013 IL App (1st) 103232, ¶ 38. See also, *Pikovsky v. 8440-8460 North Skokie Boulevard Condominium Ass'n, Inc.* 2011 IL App (1st) 103742, ¶ 16 ("[A] reviewing court will not supplement the record on appeal with the documents attached to the appellant's brief on appeal as an appendix, where there is no stipulation between the parties to supplement the record and there was no motion in the reviewing court to supplement the record with the material.") Even were we to examine those materials, the most we could surmise is that they support plaintiff's claim, but without a record of the trial, we cannot presume those materials were admitted into evidence or that they, standing alone, warrant the relief plaintiff seeks.

¶ 11 Under these circumstances, where the record is insufficient for review, we invoke the presumption in favor of the regularity of proceedings and that the evidence presented to the trial court was sufficient to support its decision. *Foutch*, 99 Ill. 2d at 394. Accordingly, we affirm the judgment of the circuit court.

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¶ 12 Affirmed.