

No. 1-15-1720

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

UNIVERSAL METRO ASIAN FAMILY SERVICES,) Appeal from the Circuit Court
) of Cook County,
Plaintiff-Appellee,)
)
v.)
) No. 14 L 6587
JAMAL A. NASIR and ALL SERVICES CLUB, INC.,)
)
Defendants,)
) Honorable
(Jamal A. Nasir, Defendant-Appellant).) Eileen O’Neill Burke,
) Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Connors and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Defendant failed to show that the trial court abused its discretion in denying his posttrial motion to vacate; and (2) Defendant failed to show the trial court’s entry of judgment against him was against the manifest weight of the evidence.

¶ 2 Plaintiff Universal Metro Asian Family Services (Universal Metro) filed a two-count complaint against defendants Jamal Nasir and All Services Club (All Services) for breach of contract and fraud. After a bench trial, the trial court entered judgment against defendants as to the breach of contract count. Mr. Nasir now appeals contending: (1) the trial court’s denial of his

posttrial motion was an abuse of discretion; and (2) the trial court's entry of judgment against him as an individual was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 Universal Metro filed its verified complaint against defendants on June 19, 2014. Universal Metro alleged that it was an Illinois not-for-profit corporation that entered into a written contract with defendants on July 29, 2007, to complete renovation and construction work on its commercial structure at 9015 North Milwaukee in Niles, Illinois, "within two months, by or before September 15, 2007." According to Universal Metro, All Services "held itself, through its agent Mr. Jamal A. Nasir, as an Illinois construction Company with knowledge and experience in design, development, renovation and construction of commercial real estate." In addition, Mr. Nasir represented to Universal Metro that he owned All Services and that All Services "was willing and able to prepare all architectural plans, obtain all necessary building permits and complete the renovation and the construction work" on the commercial structure. Universal Metro alleged that it performed all of its obligations under the contract and paid defendants \$135,522.50 of the \$200,000 contract price. However, defendants breached the contract "in that they did not *** even complete the partial work on the project in accordance with the building code and workman like standard and manner."

¶ 5 Universal Metro alleged that, as a result of defendants' breach, it paid another company approximately \$215,000 to complete the project and paid \$47,705.17 for the rental of the commercial property, which it could not use due to the delay in construction and renovation. As relief, Universal Metro requested the cost of completing the renovation; a refund of the money paid to defendants and of the rent for the period that it was unable to occupy the property due to

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the construction delay; and prejudgment interest, costs, and attorney fees. Universal Metro also sought punitive damages in connection with its fraud claim.

¶ 6 Mr. Nasir filed his initial *pro se* appearance on September 11, 2014, and the court vacated a default order previously entered against him. On December 4, 2014, counsel entered an appearance on behalf of both defendants and filed their verified answer to Universal Metro's complaint.

¶ 7 On January 8, 2015, the trial court gave defense counsel leave to withdraw and continued the matter. At the next hearing, the trial court gave defendants until March 5, 2015, to retain new counsel, which they never did. The trial proceeded on March 30, 2015, with Mr. Nasir representing himself.

¶ 8 There was no transcript from any part of the trial court proceedings. The court order of March 30, 2015, states that a bench trial was held that day and that, during the trial, Universal Metro presented three witnesses; Mr. Nasir testified for defendants "over [Universal Metro's] barring order and objection;" and nine exhibits were introduced by Universal Metro.

¶ 9 The court found in favor of Universal Metro and against both defendants on the breach of contract count and in favor of defendants on the fraud count. The court entered judgment in the amount of \$138,149.47 against defendants.

¶ 10 On April 29, 2015, Mr. Nasir filed his motion to vacate, which had three attachments. These included a "Stop Work Order" from the village of Niles dated August 31, 2006, Universal Metro's response to interrogatories in a previously filed 2008 case, and affidavits from Mr. Nasir and his general contractor regarding what had occurred in their work on the contract in 2007. Mr. Nasir argued that these showed that there was a stop work order in place from the village of Niles when Universal Metro entered into the contract, that Universal Metro had asked for

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modification of the contract, and that defendants were locked out of the job site without notice. Mr. Nasir also asked that the court grant him leave to file a counterclaim against Universal Metro for breach of contract. The court denied Mr. Nasir's motion on May 14, 2015.

¶ 11 JURISDICTION

¶ 12 Mr. Nasir timely filed his notice of appeal in this matter on June 12, 2015. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered by the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994), R. 303 (eff. Jan. 1, 2015).

¶ 13 ANALYSIS

¶ 14 Mr. Nasir represents himself on appeal. He makes two arguments: (1) that the trial court's denial of his motion to vacate was an abuse of discretion; and (2) that the trial court's entry of judgment against him, individually, was against the manifest weight of the evidence.

¶ 15 A. Denial of Mr. Nasir's Motion to Vacate

¶ 16 Initially, we must determine how to properly characterize Mr. Nasir's posttrial motion. In the background section of Universal Metro's appellate brief, it asserts that Mr. Nasir erroneously filed his posttrial motion under section 2-1301 of the Code of Civil Procedure (735 ILCS 5/2-1301 (West 2014)), when it should have been filed under section 2-1203 (735 ILCS 5/2-1203 (West 2014)). Mr. Nasir does not directly respond to Universal Metro's characterization and, on appeal, never specifically refers to the statute he intended to file his motion under, instead referring to it generally as a motion "to vacate the judgment and reopen the case." In the motion itself, Mr. Nasir indicated it was being filed pursuant to section 2-1301.

¶ 17 Section 2-1301(e) provides that the trial court "may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set

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aside any final order or judgment upon any terms and conditions that shall be reasonable.” 735 ILCS 5/2-1301(e) (West 2014). In contrast, a section 2-1203 motion is more specific: section 2-1203 provides that “[i]n all cases tried without a jury, any party may, within 30 days after the entry of the judgment ***, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief.” 735 ILCS 5/2-1203(a) (West 2014). The purpose of a section 2-1203 motion is to alert the trial court “to newly discovered evidence not available at the time of the first hearing, changes in the law, or error in the court’s application of previously existing law.” *Nissan Motor Acceptance Corp. v. Abbas Holding I, Inc.*, 2012 IL App (1st) 111296, ¶ 16. We look to the substance of a motion, rather than its label, to determine how it should be characterized. See *In re Haley D.*, 2011 IL 110886, ¶ 67. We agree with Universal Metro that Mr. Nasir’s motion is best characterized as a section 2-1203 motion.

¶ 18 In his motion to vacate, Mr. Nasir asked the trial court to vacate or, in the alternative, to reconsider the judgment. Thus, it appears that this was either a motion to reopen the evidence or to reconsider the court’s ruling based on the evidence attached to the motion.

¶ 19 When ruling on a motion to reopen the evidence, the trial court “considers whether the moving party has provided a reasonable excuse for failing to submit the additional evidence during trial, whether granting the motion would result in surprise or unfair prejudice to the opposing party, and if the evidence is of the utmost importance to the movant’s case.” (Internal quotation marks omitted.) *In re Estate of Bennoon*, 2014 IL App (1st) 122224, ¶ 55. “ ‘If evidence offered for the first time in a posttrial motion could have been produced at an earlier time, the court may deny its introduction into evidence.’ ” *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1077 (2007) (quoting *Chicago Transparent Products, Inc. v. American National Bank & Trust Co. of Chicago*, 337 Ill. App. 3d 931, 942 (2002)).

¶ 20 Similarly, “[w]hen a movant seeks reconsideration based on newly discovered evidence, a party must show that the newly discovered evidence existed before the initial hearing but had not yet been discovered or was otherwise unobtainable.” (Internal quotation marks omitted.) *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 324 (2010).

¶ 21 In both instances, we review the trial court’s decision for an abuse of discretion. *Stoval*, 374 Ill. App. 3d at 1077 (a ruling on a motion to reopen proofs is reviewed for an abuse of discretion); *Simmons*, 406 Ill. App. 3d at 324 (a ruling on a motion to reconsider is reviewed for an abuse of discretion). “A court abuses its discretion only if it acts arbitrarily, without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law; or if no reasonable person would take the position adopted by the court.” *Payne v. Hall*, 2013 IL App (1st) 113519, ¶ 12.

¶ 22 Mr. Nasir cannot show that the trial court’s denial of his motion to vacate was in any sense an abuse of discretion. It is clear from the record that the evidence attached to the motion to vacate was available long before trial. The “Stop Work Order” and the response to interrogatories predate the trial by many years. Mr. Nasir himself testified at the trial and the general contractor who supplied the other affidavit was presumably also available. Both affidavits concern events that occurred in 2007. Indeed, Mr. Nasir himself acknowledges in his brief that defendants “had an opportunity to introduce this evidence at trial.” It appears from Mr. Nasir’s brief that he failed to appreciate that he had to present whatever evidence he had at the trial. Mr. Nasir’s apparent confusion as a *pro se* litigant, however, does not excuse him from establishing the requisite criteria for the trial court’s consideration of new evidence.

¶ 23 In addition, as the appellant, Mr. Nasir has the burden of providing “a sufficiently complete record to support a claim of error.” *Wells Fargo Bank, N.A. v. Hansen*, 2016 IL App

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(1st) 143720, ¶ 15 (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch*, 99 Ill. 2d at 392. In reference to the denial of the motion to vacate, this means Mr. Nasir would have to show that the trial court’s denial of the motion was an abuse of discretion.

¶ 24 In the present case, Mr. Nasir has not provided a trial transcript, a transcript of the hearing on his posttrial motion, or suitable substitutes for either, such as a bystander’s report or an agreed statement of facts (see Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005)). Based on the record, we do not know the significance of the evidence attached to the motion to vacate, why it was not produced at trial, whether the trial court heard argument on Mr. Nasir’s motion, what the parties may have argued, or whether the court received further evidence on the motion. Under these circumstances, we must assume that the trial court did not “[act] arbitrarily, without the employment of conscientious judgment” (*Payne*, 2013 IL App (1st) 113519, ¶ 12), and that its order conformed to the law (*Hansen*, 2016 IL App (1st) 143720, ¶ 15). Accordingly, we cannot find that the trial court abused its discretion in denying Mr. Nasir’s posttrial motion.

¶ 25 B. Entry of Judgment Against Mr. Nasir

¶ 26 Mr. Nasir also contends that the trial court’s entry of judgment against him, as an individual, on Universal Metro’s breach of contract claim was in error. Mr. Nasir argues that he did not sign the contract between Universal Metro and All Services in his individual capacity and that, because “there is no evidence in the record to suggest any basis for holding [him] legally responsible for performance under the terms of the contract documents, finding him responsible for a breach of the terms of the contract is against the manifest weight of the evidence[.]”

¶ 27 Universal Metro responds that Mr. Nasir never filed a motion to be dismissed as a defendant in connection with this claim, or contested Universal Metro’s allegations that All

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Services was a sham corporation and a mere “alter ego” of Mr. Nasir’s that had no bank account and never paid contractors.

¶ 28 “The standard of review of a trial court’s judgment after a bench trial is whether that judgment is against the manifest weight of the evidence.” *Bank of America v. WS Management, Inc.*, 2015 IL App (1st) 132551, ¶ 84. “A finding is against the manifest weight of the evidence ‘only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence.’ ” *Munson v. Rinke*, 395 Ill. App. 3d 789, 795 (2009) (quoting *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002)).

¶ 29 Here, again, the record is insufficient to demonstrate that the judgment against Mr. Nasir was against the manifest weight of the evidence. As we noted above, the record on appeal does not contain a transcript of the trial, a bystander’s report, or an agreed statement of facts. On this record, “we must presume that the trial court’s order conformed to the law and had a sufficient factual basis.” *Hansen*, 2016 IL App (1st) 143720, ¶ 15.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 32 Affirmed.